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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, September 15, 2009
9:00 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL TRADE COMMISSION

RIN 3084-AA98

16 CFR Part 310

Telemarketing Sales Rule Fees

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission (the ''Commission'' or ''FTC'') is amending its Telemarketing Sales Rule (''TSR'') by updating the fees charged to entities accessing the National Do Not Call Registry (the ''Registry'') as required by the Do-Not-Call Registry Fee Extension Act of 2007.

DATES: This amendment will become effective October 1, 2009.

ADDRESSES: Requests for copies of this document should be sent to: Public Reference Branch, Federal Trade Commission, Room 130, 600 Pennsylvania Avenue, N.W., Washington, DC 20580. Copies of this document are also available on the Internet at the Commission's website: (*http://www.ftc.gov*).

FOR FURTHER INFORMATION CONTACT: Kelly A. Horne, (202) 326-3031, Division of Planning & Information, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: To comply with the Do-Not-Call Registry Fee Extension Act of 2007 (Pub. L. 110-188, 122 Stat. 635) (''Act''), the Commission is amending the TSR by updating the fees entities are charged for accessing the Registry: The revised rule increases the annual fee for access to the Registry for each area code of data to $55 per area code, or $27 per area code of data during the second six months of an entity's annual subscription period. The maximum amount that would be charged to any single entity for accessing area codes of data is increased to $15,058.

This increase is in accordance with the Act, which specifies that beginning after fiscal year 2009, the dollar amounts charged shall be increased by an amount equal to the amounts specified in the Act, whichever fee is applicable, multiplied by the percentage (if any) by which the average of the monthly consumer price index (for all urban consumers published by the Department of Labor) (''CPI'') for the most recently ended 12-month period ending on June 30 exceeds the CPI for the 12-month period ending June 30, 2008. The Act also states that any increase shall be rounded to the nearest dollar and that there shall be no increase in the dollar amounts if the change in the CPI is less than 1 percent. The adjustments to the applicable fees, if any, are to be published in the **Federal Register** no later than September 1 of each year.

The Act specified that, for fiscal year 2009, the annual fee for access to the Registry for each area code of data would be $54 per area code, or $27 per area code of data during the second six months of an entity's annual subscription period, and that the maximum amount that would be charged to any single entity for accessing area codes of data would be $14,850. The average value of the CPI for July 1, 2007 to June 30, 2008 was 211.702; the average value for July 1, 2008 to June 30, 2009 was 214.658, an increase of 1.4 percent. Applying the 1.4 percent increase to the fiscal year 2009 amounts leads to an increase in the fee for access to a single area code for a full year to $54.76 (rounded to $55) and an increase in the maximum amount charged to $15,057.90 (rounded to $15,058). The fee for accessing an additional area code for a half year remains $27 because the increase is $0.38, and, therefore, the new amount continues to round to $27.

Administrative Procedure Act; Regulatory Flexibility Act; Paperwork Reduction Act. The revisions to the Fee Rule are technical in nature and merely incorporate statutory changes to the TSR. These statutory changes have been adopted without change or interpretation, making public comment unnecessary. Therefore, the Commission has determined that the notice and comment requirements of the Administrative Procedure Act do not apply. *See* 5 U.S.C. 553(b). For this reason, the requirements of the Regulatory Flexibility Act also do not apply. *See* 5 U.S.C. 603, 604. Pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501-3521, the Office of Management and Budget (''OMB'') approved the information collection requirements in the Amended TSR and assigned the following existing OMB Control Number: 3084-0097. The amendments outlined in this Final Rule pertain only to the fee provision (sec. 310.8) of the Amended TSR and will not establish or alter any record keeping, reporting, or third-party disclosure requirements elsewhere in the Amended TSR.

List of Subjects in 16 CFR Part 310

Advertising, Consumer protection, Reporting and recordkeeping requirements, Telephone, Trade practices.

■ Accordingly, the Federal Trade Commission amends part 310 of title 16 of the Code of Federal Regulations as follows:

PART 310—TELEMARKETING SALES RULE

■ 1. The authority citation for part 310 continues to read as follows:

Authority: 15 U.S.C. 6101-6108; 15 U.S.C. 6151-6155.

■ 2. Revise §§ 310.8(c) and (d) to read as follows:

§ 310.8 Fee for access to the National Do Not Call Registry.

* * * * *

(c) The annual fee, which must be paid by any person prior to obtaining access to the National Do Not Call Registry, is $55 for each area code of data accessed, up to a maximum of $15,058; *provided*, however, that there shall be no charge to any person for accessing the first five area codes of data, and *provided further*, that there shall be no charge to any person engaging in or causing others to engage in outbound telephone calls to consumers and who is accessing area codes of data in the National Do Not Call Registry if the person is permitted to access, but is not required to access, the National Do Not Call Registry under this Rule, 47 CFR 64.1200, or any other Federal regulation or law. Any person accessing the National Do Not Call

Registry may not participate in any arrangement to share the cost of accessing the registry, including any arrangement with any telemarketer or service provider to divide the costs to access the registry among various clients of that telemarketer or service provider.

(d) Each person who pays, either directly or through another person, the annual fee set forth in § 310.8(c), each person excepted under § 310.8(c) from paying the annual fee, and each person excepted from paying an annual fee under § 310.4(b)(1)(iii)(B), will be provided a unique account number that will allow that person to access the registry data for the selected area codes at any time for the twelve month period beginning on the first day of the month in which the person paid the fee (''the annual period''). To obtain access to additional area codes of data during the first six months of the annual period, each person required to pay the fee under § 310.8(c) must first pay $55 for each additional area code of data not initially selected. To obtain access to additional area codes of data during the second six months of the annual period, each person required to pay the fee under § 310.8(c) must first pay $27 for each additional area code of data not initially selected. The payment of the additional fee will permit the person to access the additional area codes of data for the remainder of the annual period.

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E9–20252 Filed 8–24–09; 8:45 am]

BILLING CODE 6750–01–S

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 211, 231, and 241

[Release Nos. 33–9062A; 34–60519A; FR–80A]

Commission Guidance Regarding the Financial Accounting Standards Board's Accounting Standards Codification

AGENCY: Securities and Exchange Commission.

ACTION: Interpretation.

SUMMARY: The Securities and Exchange Commission (the ''Commission'') is publishing interpretive guidance regarding the release by the Financial Accounting Standards Board (''FASB'') of its FASB Accounting Standards Codification™ (''FASB Codification'').

DATES: *Effective Date:* August 25, 2009.

FOR FURTHER INFORMATION CONTACT: Questions about specific filings should be directed to staff members responsible for reviewing the documents the registrant files with the Commission. General questions about this release should be referred to Jenifer Minke-Girard, Senior Associate Chief Accountant, or Jeffrey S. Cohan, Senior Special Counsel, Office of the Chief Accountant, at (202) 551–5300, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–6628.

SUPPLEMENTARY INFORMATION:

I. Background

Section 108 of the Sarbanes-Oxley Act of 2002 [1] amended Section 19(b) of the Securities Act of 1933 [2] to provide that the Commission may recognize, as generally accepted for purposes of the securities laws, any accounting principles established by a standard setting body that meets specified criteria. On April 25, 2003, the Commission issued a policy statement concluding that the FASB and its parent organization, the Financial Accounting Foundation, satisfied the criteria for an accounting standard setting body under the Act, and recognizing the FASB's financial accounting and reporting standards as ''generally accepted'' for purposes of the federal securities laws.[3]

On June 30, 2009, the FASB issued FASB Statement of Financial Accounting Standards No. 168, *The FASB Accounting Standards Codification™ and the Hierarchy of Generally Accepted Accounting Principles—a replacement of FASB Statement No. 162* (Statement No. 168), to establish the FASB Codification as the source of authoritative non-Commission accounting principles recognized by the FASB to be applied by nongovernmental entities in the preparation of financial statements in conformity with U.S. generally accepted accounting principles (''U.S. GAAP''). Statement No. 168 is effective for financial statements issued for interim and annual periods ending after September 15, 2009. The FASB Codification reorganizes existing U.S. accounting and reporting standards issued by the FASB and other related private-sector standard setters, and all guidance contained in the FASB Codification carries an equal level of authority.[4]

The FASB Codification directly impacts certain of the Commission's rules, regulations, releases and staff bulletins (collectively referred to in this release as ''Commission's rules and staff guidance''), which refer to specific FASB standards or other private sector standard-setter literature under U.S. GAAP, because such references are now superseded by the FASB Codification. The Commission is therefore issuing interpretive guidance to avoid confusion on the part of issuers, auditors, investors, and other users of financial statements and Commission rules and staff guidance.

II. Discussion

Many parts of the Commission's rules and staff guidance include direct references to specific standards under U.S. GAAP. For example, Regulation S–X, which, together with the Commission's Financial Reporting Releases, sets forth the form and content of and requirements for financial statements required to be filed with the Commission,[5] includes specific references to specific standards under U.S. GAAP.[6] In addition, some parts of the Commission's rules and staff guidance outside of the financial statement context include specific references to specific standards under U.S. GAAP, such as in Item 402 of Regulation S–K regarding disclosure of executive compensation.[7]

Given the possible confusion between the Commission's rules and staff guidance, on the one hand, and the FASB Codification, on the other hand, the Commission believes it is necessary to publish the guidance in this release. Concurrent with the effective date of the FASB Codification, references in the Commission's rules and staff guidance to specific standards under U.S. GAAP should be understood to mean the corresponding reference in the FASB Codification. We note that the FASB Codification includes a cross-reference finding tool that can assist users in identifying where previous accounting literature resides in the FASB Codification. The Commission and its staff also intend to embark on a longer term rulemaking and updating initiative to revise comprehensively specific

[1] Public Law 107–204, 116 Stat. 745 (2002).

[2] 15 U.S.C. 77s(b).

[3] See Commission Statement of Policy Reaffirming the Status of the FASB as a Designated Private-Sector Standard Setter, Release Nos. 33–8221; 34–47743; IC–26028; FR–70 (April 25, 2003) [68 FR 23333 (May 1, 2003)].

[4] The FASB Codification is available at *http://asc.fasb.org/home.*

[5] 17 CFR 210.1–01.

[6] See, *e.g.,* Rule 1–02(u) of Regulation S–X [17 CFR 210.1–02(u)], which defines the term ''related parties'' by reference to FASB Statement of Financial Accounting Standards No. 57, *Related Party Disclosures.*

[7] 17 CFR 229.402.

references to specific standards under U.S. GAAP in the Commission's rules and staff guidance.

It should be noted that although the FASB has stated that the FASB Codification supersedes existing references in U.S. GAAP, the FASB Codification does not supersede Commission rules or regulations. We understand that the FASB Codification, as a service to users, includes references to some Commission rules and staff guidance. However, the FASB Codification is not the authoritative source for such content, nor does its inclusion in the FASB Codification affect how such content may be updated in the future.

III. Codification Update

The ''Codification of Financial Reporting Policies'' announced in Financial Reporting Release No. 1 (April 15, 1982) [47 FR 21028] is updated by adding at the end of Section 101, under the Financial Reporting Number (FR–80A) assigned to this interpretive release, the text in Sections I and II of this release.

The Codification is a separate publication of the Commission. It will not be published in the **Federal Register**/Code of Federal Regulations.

List of Subjects

17 CFR Part 211

Reporting and recordkeeping requirements, Securities.

17 CFR Parts 231 and 241

Securities.

Amendments to the Code of Federal Regulations

■ For the reasons set out in the preamble, the Commission is amending title 17, chapter II of the Code of Federal Regulations as set forth below:

PART 211—INTERPRETATIONS RELATING TO FINANCIAL REPORTING MATTERS

■ Part 211, Subpart A, is amended by adding Release No. FR–80A and the release date of August 18, 2009 to the list of interpretive releases.

PART 231—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES ACT OF 1933 AND GENERAL RULES AND REGULATIONS THEREUNDER

■ Part 231 is amended by adding Release No. 33–9062A and the release date of August 18, 2009 to the list of interpretive releases.

PART 241—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

■ Part 241 is amended by adding Release No. 34–60519A and the release date of August 18, 2009 to the list of interpretive releases.

By the Commission.

Dated: August 19, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–20381 Filed 8–24–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 866

[Docket No. FDA–2009–N–0344]

Microbiology Devices; Reclassification of Herpes Simplex Virus Types 1 and 2 Serological Assays

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule.

SUMMARY: The Food and Drug Administration (FDA) is implementing a direct final rule correcting the regulation classifying herpes simplex virus (HSV) serological assays by removing the reference to HSV serological assays other than type 1 and type 2. When reclassifying this device, FDA mistakenly distinguished between HSV serological assays type 1 and type 2 and all other HSV serological assays. At that time, and today, the only preamendments HSV serological assays which FDA was aware of were type 1 and type 2 and, therefore, the classification of HSV assays other than type 1 and type 2 was incorrect. FDA is correcting the classification of this device to eliminate possible confusion resulting from this error. Elsewhere in this issue of the **Federal Register**, we are publishing a companion proposed rule under FDA's usual procedure for notice and comment to provide a procedural framework to finalize the rule in the event we receive significant adverse comment and withdraw this direct final rule.

DATES: This rule is effective December 7, 2009. Submit written or electronic comments on the direct final rule by October 8, 2009. If we receive no significant adverse comments within the specified comment period, we intend to publish a document confirming the effective date of the final rule in the **Federal Register** within 30 days after the comment period on this direct final rule ends. If we receive any timely significant adverse comment, we will withdraw this final rule in part or in whole by publication of a document in the **Federal Register** within 30 days after the comment period ends.

ADDRESSES: You may submit comments, identified by Docket No FDA–2009–N–0344, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

Written Submissions

Submit written submissions in the following ways:

- *Fax:* 301–827–6870.
- *Mail/Hand delivery/Courier [For paper, disk, or CD-ROM submissions]:* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

To ensure more timely processing of comments, FDA is no longer accepting comments submitted to the agency by e-mail. FDA encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal, as described previously, in the **ADDRESSES** portion of this document under *Electronic Submissions*.

Instructions: All submissions received must include the agency name and Docket No(s). and Regulatory Information Number (RIN) (if a RIN number has been assigned) for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov*, including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number(s), found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Scott McFarland, Center for Devices and Radiological Health WO/66, rm. 5543, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD, 301–796–6217.

SUPPLEMENTARY INFORMATION:

I. What Is the Background of the Rule?

The Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Public Law 94–295), the Safe Medical Devices Act of 1990 (SMDA) (Public Law 101–629), the Food and Drug Modernization Act of 1997 (FDAMA) (Public Law 105–115), and the Food and Drug Administration Amendments Act of 2007 (FDAAA) (Public Law 110–85), among other amendments, established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), are commonly referred to as ''preamendments devices.'' Under section 513 of the act, FDA classifies preamendments devices according to the following steps: (1) FDA receives a recommendation from a device classification panel (an FDA advisory committee); (2) FDA publishes the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) FDA publishes a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution before May 28, 1976, are commonly referred to as ''postamendments devices.'' These devices are classified automatically by statute (section 513(f) of the act (21 U.S.C. 360c(f)) into class III and require premarket approval, unless and until: (1) FDA reclassifies the device into class I or II; (2) FDA issues an order classifying the device into class I or II in accordance with section 513(f)(2) of the act; or (3) FDA issues an order under section 513(i) of the act (21 U.S.C. 360c(i)) finding the device to be substantially equivalent to a predicate device that does not require premarket approval.

In the **Federal Register** of November 9, 1983 (47 FR 50823), FDA classified the preamendments devices, herpes simplex virus serological reagents, into class III (§ 866.3305 (21 CFR 866.3305)). At the time FDA classified the device, the only preamendments HSV serological assays FDA was aware of were type 1 and type 2 HSV serological assays. Since that time, FDA has not become aware of any other preamendments HSV serological assays, nor has it received a premarket notification for a HSV serological assay other than a type 1 or type 2 HSV serological assay.

In the **Federal Register** of April 3, 2007 (72 FR 15828), FDA published a final rule reclassifying the preamendments device HSV serological assays from class III to class II. In that rulemaking FDA identified the device being reclassified as type 1 and type 2 HSV serological assays and identified other HSV serological assays as class III devices. However, as stated previously, the only preamendments HSV serological assays of which FDA is aware are type 1 and type 2 HSV serological assays. To avoid any possible confusion, FDA is correcting the regulation to accurately describe this generic type of device. This direct final rule corrects the classification regulation by removing the reference to HSV serological assays other than type 1 and type 2.

II. What Does This Direct Final Rulemaking Do?

In this direct final rule, FDA is correcting § 866.3305 by removing from the regulation the reference to HSV serological assays other than type 1 and type 2.

III. What Are the Procedures for Issuing a Direct Final Rule?

In the **Federal Register** of November 21, 1997 (62 FR 62466), FDA announced the availability of the guidance document entitled ''Guidance for FDA and Industry: Direct Final Rule Procedures'' that described when and how FDA will employ direct final rulemaking. We believe that this rule is appropriate for direct final rulemaking because it is intended to make noncontroversial changes to existing regulations. We anticipate no significant adverse comment. Consistent with FDA's procedures on direct final rulemaking, we are publishing elsewhere in this issue of the **Federal Register** a companion proposed rule that is identical to the direct final rule. The companion proposed rule provides a procedural framework within which the rule may be finalized in the event the direct final rule is withdrawn because of any significant adverse comment. The comment period for this direct final rule runs concurrently with the comment period of the companion proposed rule. Any comments received in response to the companion proposed rule will also be considered as comments regarding this direct final rule.

We are providing a comment period on the direct final rule of 75 days after the date of publication in the **Federal Register**. If we receive any significant adverse comment, we intend to withdraw this final rule before its effective date by publication of a notice in the **Federal Register** within 30 days after the comment period ends. A significant adverse comment is defined as a comment that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without change. In determining whether an adverse comment is significant and warrants withdrawing a direct final rulemaking, we will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process in accordance with section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553). Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered significant or adverse under this procedure. For example, a comment recommending an additional change to the rule will not be considered a significant adverse comment, unless the comment states why the rule would be ineffective without the additional change. In addition, if a significant adverse comment applies to part of a rule and that part can be severed from the remainder of the rule, we may adopt as final those parts of the rule that are not the subject of a significant adverse comment. If we withdraw the direct final rule, all comments received will be considered under the companion proposed rule in developing a final rule under the usual notice-and-comment procedures under the APA (5 U.S.C. 552a *et seq.*). If we receive no significant adverse comment during the specified comment period, we intend to publish a confirmation document in the **Federal Register** within 30 days after the comment period ends.

IV. What is the Legal Authority for This Rule?

FDA is issuing this direct final rule under the device and general administrative provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 360i, 371, and 374).

V. What is the Environmental Impact of This Rule?

FDA has determined under 21 CFR 25.30(i) and 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on

the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. What is the Economic Impact of This Rule?

FDA has examined the impacts of the direct final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this direct final rule is not a significant regulatory action under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because we do not believe any companies are currently selling or producing these devices, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $133 million, using the most current (2008) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this final rule to result in any 1–year expenditure that would meet or exceed this amount.

VII. How Does the Paperwork Reduction Act of 1995 Apply to This Rule?

This direct final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) is not required.

VIII. What are the Federalism Impacts of This Rule?

FDA has analyzed this direct final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

IX. How Do You Submit Comments on This Rule?

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 866

Biologics, Laboratories, and Medical devices.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed to amend 21 CFR part 866 as follows:

PART 866—IMMUNOLOGY AND MICROBIOLOGY DEVICES

■ 1. The authority citation for 21 CFR part 866 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. Section 866.3305 is amended by removing paragraph (c) and by revising paragraph (b) to read as follows:

§ 866.3305 Herpes simplex virus serological assays.

* * * * *

(b) *Classification.* Class II (special controls). The device is classified as class II (special controls). The special control for the device is FDA's guidance document entitled ''Class II Special Controls Guidance Document: Herpes Simplex Virus Types 1 and 2 Serological Assays.'' For availability of the guidance document, see § 866.1(e).

Dated: August 17, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–20411 Filed 8–24–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Parts 502, 514, 531, 533, 535, 537, 539, 556, 558, 571, and 573

RIN 3141–0001

Amendments to Various National Indian Gaming Commission Regulations

AGENCY: National Indian Gaming Commission.

ACTION: Final rule; delay of effective date.

SUMMARY: The National Indian Gaming Commission (''NIGC'') announces the extension of the effective date on the final rule concerning various amendments to the National Indian Gaming Commission regulations. The final rule was published in the **Federal Register** on July 27, 2009. The Commission has changed the effective date to December 31, 2009, in order to extend the transition time.

DATES: *Effective Date:* The effective date for the final rule published July 27, 2009, at 74 FR 36926, is delayed from August 26, 2009, until December 31, 2009.

FOR FURTHER INFORMATION CONTACT: Rebecca Chapman, Staff Attorney, Office of General Counsel, at (202) 632–7003; fax (202) 632–7066 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: Congress established the National Indian Gaming Commission under the Indian Gaming Regulatory Act of 1988 (25 U.S.C. 2701–21) (''IGRA'') to regulate gaming on Indian lands. The NIGC issued a final rule updating various NIGC regulations and streamlining procedures, which was published in the **Federal Register** on July 27, 2009 (74 FR 36926). The final rule provided an effective date of August 26, 2009. The NIGC is extending the effective date to December 31, 2009.

Philip N. Hogen,

Chairman.

Norman H. DesRosiers,

Vice Chairman.

[FR Doc. E9–20511 Filed 8–24–09; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF JUSTICE

28 CFR Part 16

[CPCLO Order No. 003–2009]

Privacy Act of 1974; Implementation

AGENCY: Criminal Division, Department of Justice.

ACTION: Final rule.

SUMMARY: The Criminal Division (CRM), Department of Justice, issued a proposed rule to amend its Privacy Act regulations (Title 28 of the Code of Federal Regulations, Part 16), to revise the exemptions for the following newly modified Privacy Act system of records entitled ''Organized Crime Drug Enforcement Task Force Fusion Center and International Organized Crime Intelligence and Operations Center System,'' JUSTICE/CRM–028, 74 FR 26598 (June 3, 2009). The ''Organized Crime Drug Enforcement Task Force Fusion Center and International Organized Crime Intelligence and Operations Center System,'' JUSTICE/CRM–028, is exempt from the subsections of the Privacy Act listed below for the reasons set forth in the following text. Information in this system of records relates to matters of law enforcement, and the exemptions are necessary to avoid interference with law enforcement responsibilities and to protect the privacy of third parties.

DATES: *Effective Date:* August 25, 2009.

FOR FURTHER INFORMATION CONTACT: Rena Y. Kim, Chief FOIA/PA Unit Criminal Division, Department of Justice, Suite 1127, Keeney Building, Washington, DC 20530–0001 on (202) 616–0370.

SUPPLEMENTARY INFORMATION: The notice of the proposed rule with invitation to comment was published on June 3, 2009, at 74 FR 26598. No comments were received. The Department of Justice is exempting JUSTICE/CRM–028 from 5 U.S.C. 552a (c)(3), and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (4)(G), (H), and (I), (e)(5) and (e)(8); (f) and (g).

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, this order will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 16

Administrative practices and procedures, Courts, Freedom of Information, Sunshine Act and Privacy.

■ Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 2940–2008, this rule amends 28 CFR part 16 as follows:

PART 16—PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

■ 1. The authority citation for Part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b (g), and 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717 and 9701.

■ 2. Section 16.91 is amended by revising paragraphs (u) and (v) to read as follows:

§ 16.91 Exemption of Criminal Division Systems—limited access, as indicated.

* * * * *

(u) The following system of records is exempted pursuant to the provisions of 5 U.S.C. 552a(j) and/or (k) from subsections (c)(3) and (4); (d)(1), (d)(2), (d)(3) and (d)(4); (e)(1), (e)(2), (e)(3), (e)(4)(G), (H) and (I), (e)(5) and (e)(8); (f), and (g) of 5 U.S.C. 552a: Organized Crime Drug Enforcement Task Force Fusion Center and International Organized Crime Intelligence and Operations Center System (JUSTICE/CRM–028). These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a (j) and/or (k).

(v) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because to provide the subject with an accounting of disclosures of records in this system could inform that individual of the existence, nature, or scope of an actual or potential law enforcement or counterintelligence investigation by the Organized Crime Drug Enforcement Task Force Fusion Center, the International Organized Crime Intelligence and Operations Center, or the recipient agency, and could permit that individual to take measures to avoid detection or apprehension, to learn the identity of witnesses and informants, or to destroy evidence, and would therefore present a serious impediment to law enforcement or counterintelligence efforts. In addition, disclosure of the accounting would amount to notice to the individual of the existence of a record. Moreover, release of an accounting may reveal information that is properly classified pursuant to Executive Order and could compromise the national defense or foreign policy.

(2) From subsection (c)(4) because this subsection is inapplicable to the extent that an exemption is being claimed from subsections (d)(1), (2), (3), and (4).

(3) From subsection (d)(1) because disclosure of records in the system could alert the subject of an actual or potential criminal, civil, or regulatory investigation of the existence of that investigation, of the nature and scope of the information and evidence obtained as to his activities, of the identity of confidential witnesses and informants, of the investigative interest of the Organized Crime Drug Enforcement Task Force Fusion Center, International Organized Crime Intelligence and Operations Center, and other intelligence or law enforcement agencies (including those responsible for civil proceedings related to laws against drug trafficking or related financial crimes or international organized crime); lead to the destruction of evidence, improper influencing of witnesses, fabrication of testimony, and/or flight of the subject; reveal the details of a sensitive investigative or intelligence technique, or the identity of a confidential source; or otherwise impede, compromise, or interfere with investigative efforts and other related law enforcement and/or intelligence activities. In addition, disclosure could invade the privacy of third parties and/or endanger the life, health, and physical safety of law enforcement personnel, confidential informants, witnesses, and potential crime victims. Access to records could also result in the release of information properly classified pursuant to Executive Order, thereby compromising the national defense or foreign policy.

(4) From subsection (d)(2) because amendment of the records thought to be incorrect, irrelevant, or untimely would also interfere with ongoing investigations, criminal or civil law enforcement proceedings, and other law enforcement activities and impose an impossible administrative burden by requiring investigations, analyses, and reports to be continuously reinvestigated and revised, as well as impact information properly classified pursuant to Executive Order.

(5) From subsections (d)(3) and (4) because these subsections are inapplicable to the extent exemption is claimed from (d)(1) and (2).

(6) From subsection (e)(1) because, in the course of its acquisition, collation, and analysis of information under the statutory authority granted to them, both the Organized Crime Drug Enforcement Task Force Fusion Center and International Organized Crime Intelligence and Operations Center will occasionally obtain information, including information properly classified pursuant to Executive Order, that concern actual or potential

violations of law that are not strictly within its statutory or other authority or may compile information in the course of an investigation which may not be relevant to a specific prosecution. It is impossible to determine in advance what information collected during an investigation will be important or crucial to the apprehension of fugitives. In the interests of effective law enforcement, it is necessary to retain such information in this system of records because it can aid in establishing patterns of criminal activity and can provide valuable leads for federal and other law enforcement agencies. This consideration applies equally to information acquired from, or collated or analyzed for, both law enforcement agencies and agencies of the U.S. foreign intelligence community and military community.

(7) From subsection (e)(2) because in a criminal, civil, or regulatory investigation, prosecution, or proceeding, the requirement that information be collected to the greatest extent practicable from the subject individual would present a serious impediment to law enforcement because the subject of the investigation, prosecution, or proceeding would be placed on notice as to the existence and nature of the investigation, prosecution, and proceeding and would therefore be able to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony. Moreover, thorough and effective investigation and prosecution may require seeking information from a number of different sources.

(8) From subsection (e)(3) (to the extent applicable) because the requirement that individuals supplying information be provided a form stating the requirements of subsection (e)(3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants and endanger their lives, health, and physical safety. The individual could seriously interfere with undercover investigative techniques and could take appropriate steps to evade the investigation or flee a specific area.

(9) From subsections (e)(4)(G), (H) and (I) because this system is exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

(10) From subsection (e)(5) because the acquisition, collation, and analysis of information for law enforcement purposes from various agencies does not permit a determination in advance or a prediction of what information will be matched with other information and thus whether it is accurate, relevant, timely and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can often only be determined in a court of law. The restrictions imposed by subsection (e)(5) would restrict the ability of trained investigators, intelligence analysts, and government attorneys to exercise their judgment in collating and analyzing information and would impede the development of criminal or other intelligence necessary for effective law enforcement.

(11) From subsection (e)(8) because the individual notice requirements of subsection (e)(8) could present a serious impediment to law enforcement by revealing investigative techniques, procedures, evidence, or interest and interfering with the ability to issue warrants or subpoenas, and could give persons sufficient warning to evade investigative efforts.

(12) From subsections (f) and (g) because these subsections are inapplicable to the extent that the system is exempt from other specific subsections of the Privacy Act.

Dated: August 18, 2009.

Nancy C. Libin,

Chief Privacy and Civil Liberties Officer.

[FR Doc. E9–20364 Filed 8–24–09; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

42 CFR Part 3

RIN 0991–AB53

Patient Safety and Quality Improvement: Civil Money Penalty Inflation Adjustment

AGENCY: Office for Civil Rights, Office of the Secretary, HHS.

ACTION: Direct final rule.

SUMMARY: The Department of Health and Human Services amends the Patient Safety and Quality Improvement Rule by adjusting for inflation the maximum civil money penalty amount for violations of the confidentiality provisions of the Rule. We are amending the penalty amount to comply with the Federal Civil Penalties Inflation Adjustment Act of 1990. We are using direct final rulemaking for this action because we expect that there will be no significant adverse comment on the rule.

DATES: This rule is effective November 23, 2009 without further action, unless significant adverse comment is received by September 24, 2009. If significant adverse comment is received, OCR will publish a timely withdrawal of the document in the **Federal Register**.

ADDRESSES: Send comments to one of the following addresses. Please do not submit duplicate comments. We will treat a comment directed to either the direct final rule or proposed rule (discussed in the **SUPPLEMENTARY INFORMATION** section) as being directed towards both, therefore there is no need to submit comments on both documents.

- *Federal eRulemaking Portal:* You may submit electronic comments at *http://www.regulations.gov*. Follow the instructions for submitting electronic comments. Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.
- *Regular, Express, or Overnight Mail:* You may mail written comments (one original and two copies) to the following address only: U.S. Department of Health and Human Services, Office for Civil Rights, *Attention:* PSQIA CMP Adjustment (RIN 0991–AB53), Hubert H. Humphrey Building, Room 509F, 200 Independence Avenue, SW., Washington, DC 20201. Mailed comments may be subject to delivery delays due to security procedures. Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.
- *Hand Delivery or Courier:* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) to the following address only: Office for Civil Rights, *Attention:* PSQIA CMP Adjustment (RIN 0991–AB53), Hubert H. Humphrey Building, Room 509F, 200 Independence Avenue, SW., Washington, DC 20201. (Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without federal government identification, commenters are encouraged to leave their comments in the mail drop slots located in the main lobby of the building.)

Inspection of Public Comments: All comments received before the close of the comment period will be available for public inspection, including any personally identifiable or confidential business information that is included in a comment. We will post all comments received before the close of the

comment period at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Andra Wicks, 202–205–2292.

SUPPLEMENTARY INFORMATION:

I. Use of a Direct Final Rule

The Department has chosen to issue this rule as a direct final rule because we do not expect to receive any significant adverse comment on the rule. A direct final rule is a rule that provides an opportunity for comment and then automatically becomes effective on a later date if no significant adverse comments are received. We do not anticipate significant adverse comments because this rule's amendment is required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note, as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. 3701)) (Inflation Adjustment Act), and the Department has no discretion in how it calculates the adjustment.

As reflected in the **DATES** section above, for this direct final rule we are providing a 30-day comment period, and the rule will then become effective 60 days later if no significant adverse comments are received. If we do not receive any significant adverse comments in response to the direct final rule or the proposed rule discussed below, this rule will become effective on the date set forth in the **DATES** section. If we receive significant adverse comments to this direct final rule or the proposed rule, we will publish a document withdrawing this final rule in the **Federal Register** prior to that date.

In the proposed rule section of this issue of the **Federal Register**, we are concurrently proposing and soliciting comments on this rule. If we withdraw this direct final rule based on the receipt of any significant adverse comments, we will publish a final rule based on the proposed rule and any comments to the proposed or direct final rule.

The Department will not provide additional opportunity for comment.

II. Background

The Patient Safety and Quality and Improvement Act of 2005 (Patient Safety Act), 42 U.S.C. 299b–21 to 299b–26, amended Title IX of the Public Health Service Act, 42 U.S.C. 299 *et seq.*, the authorizing statute for the Agency for Healthcare Research and Quality. The Patient Safety Act creates a voluntary program through which health care providers can share information related to patient safety events and concerns (known as patient safety work product (PSWP)) with patient safety organizations (PSOs) for the purpose of improving patient safety and the quality of care nationwide. The Patient Safety Act requires the Department of Health and Human Services (''HHS'' or ''the Department'') to maintain a listing of PSOs. The Patient Safety Act provides that PSWP is both privileged and confidential. While participation in the patient safety program is voluntary, a violation of the Patient Safety Act's confidentiality requirements is subject to a civil money penalty (CMP) of up to $10,000. 42 U.S.C. 299b–22(f).

On November 21, 2008, the Department promulgated regulations to implement the Patient Safety Act. 73 FR 70732, Nov. 21, 2008, adding 42 CFR part 3. The regulations provide for the listing and delisting of PSOs, the confidentiality and privilege protections of PSWP, and procedures for enforcement against violations of the regulations' confidentiality requirements. In particular, under § 3.404, a person who discloses identifiable PSWP in knowing or reckless violation of the Patient Safety Act and 42 CFR part 3 shall be subject to a CMP of not more than $10,000 for each act constituting a violation.

The Agency for Healthcare Research and Quality administers the provisions of the regulations relating to PSOs. The Office for Civil Rights investigates and enforces compliance with the confidentiality provisions and, if warranted, may assess CMPs for knowing or reckless violations of confidentiality.

III. The Inflation Adjustment Act

Congress enacted the Inflation Adjustment Act based on its findings that the impact of CMPs had been reduced by inflation and that reducing the impact of CMPs had weakened their deterrent effect. Inflation Adjustment Act § 2, 28 U.S.C. 2461 note. In general, the Inflation Adjustment Act requires Federal agencies to issue regulations to adjust for inflation each CMP provided by law within their jurisdiction. The Inflation Adjustment Act applies to civil penalties found within the Public Health Service Act, such as the Patient Safety Act's CMP provision.[1]

[1] We note that § 4 of the Inflation Adjustment Act, found at 28 U.S.C. 2461 note, excludes a small number of statutes, such as the Social Security Act, from the requirement for agencies to adjust their CMPs for inflation. Because the CMPs for title II, subtitle F (Administrative Simplification) of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) are found at section 1176 of the Social Security Act, the Department has not made similar inflation adjustments to the HIPAA administrative simplification CMPs at 45 CFR 160.404.

The Inflation Adjustment Act directs agencies to issue regulations to adjust CMPs under their authority by October 23, 1996, and to make additional adjustments at least once every four years thereafter. Because the Patient Safety Act was enacted after October 23, 1996, we interpret the Inflation Adjustment Act as requiring the Department to issue a regulation to adjust for inflation the Patient Safety Act's CMP amount at least once every four years, beginning from the Patient Safety Act's date of enactment, which was July 29, 2005. Thus, we are issuing this rule four years from the Patient Safety Act's enactment.

IV. Description of Amendment

The Inflation Adjustment Act provides for the adjustment of a penalty amount through a three-step process. First, we calculate an increase in the penalty amount by a ''cost-of-living adjustment.'' Inflation Adjustment Act § 5(a), 28 U.S.C. 2461 note. The Inflation Adjustment Act defines the cost-of-living adjustment as ''the percentage (if any) for each civil monetary penalty by which—(1) the Consumer Price Index for the month of June of the calendar year preceding the adjustment, exceeds (2) the Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law.'' Inflation Adjustment Act § 5(b), 28 U.S.C. 2461 note. Second, we round the adjustment amount pursuant to the methodology set forth in section 5(a) of the Inflation Adjustment Act, which rounds the increase based on the size of the underlying penalty, as follows:

> Any increase determined under this subsection shall be rounded to the nearest—
>
> (1) Multiple of $10 in the case of penalties less than or equal to $100;
>
> (2) Multiple of $100 in the case of penalties greater than $100 but less than or equal to $1,000;
>
> (3) Multiple of $1,000 in the case of penalties greater than $1,000 but less than or equal to $10,000;
>
> (4) Multiple of $5,000 in the case of penalties greater than $10,000 but less than or equal to $100,000;
>
> (5) Multiple of $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000; and
>
> (6) Multiple of $25,000 in the case of penalties greater than $200,000.

Third, pursuant to the Debt Collection Improvement Act of 1996 § 31001(s)(2)'s amendment to the Inflation Adjustment Act, we must limit the first adjustment of a CMP to ten percent of the penalty amount.

With respect to step 1 of the adjustment, the Consumer Price Index

(CPI) for June of 2008 (the calendar year preceding this adjustment) was 218.815.[2] The CPI for June of 2005 (the calendar year in which the Patient Safety Act CMP was last set) was 194.5. The percent change in these CPIs is an increase of 12.5 percent. This leads to an unrounded increase in the Patient Safety Act's CMP of $1,250.

Under step 2, we round the amount of the increase ($1,250) based on the size of the penalty ($10,000). Because the penalty of $10,000 is ''greater than $1,000 but less than or equal to $10,000,'' we round the increase to the nearest multiple of $1,000. This leads to a rounded increase of $1,000, for an increased penalty of $11,000.

Step 3 requires that the first adjustment to a civil penalty be limited to 10 percent of the penalty amount. This is the first adjustment to the Patient Safety Act's CMP. Therefore, this 10 percent cap is applicable. Pursuant to this cap, the adjusted penalty cannot exceed $11,000. Because the adjusted penalty is $11,000, it does not exceed the cap. Accordingly, the Patient Safety Act's revised maximum CMP amount, after adjusting for inflation pursuant to the Inflation Adjustment Act, is $11,000.

Based on the above, we are amending 42 CFR 3.404(b) to provide that the Secretary may impose a CMP of not more than $11,000, rather than the current limit of $10,000, for a violation of the Patient Safety Act's confidentiality requirements.

V. Environmental Impact

We have determined under 21 CFR 25.30(a) and (h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Paperwork Reduction Act 1995

We have concluded that the CMP adjustment in this direct final rule is not subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) because it does not constitute a ''collection of information.'' That is, the adjustment does not require disclosure of any information to the Department, third parties, or the public.

[2] The Inflation Adjustment Act defines ''Consumer Price Index'' as ''the Consumer Price Index for all-urban consumers published by the Department of Labor.'' Historic data on the Consumer Price Index for all-urban consumers, including the data relied upon in this rulemaking, can be found at *ftp://ftp.bls.gov/pub/special.requests/cpi/cpiai.txt.*

VII. Federalism

The Department has analyzed this direct final rule in accordance with the principles set forth in Executive Order 13132. We have determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, we have concluded that the rule does not contain policies that have Federalism implications as defined in the Executive Order and, consequently, a Federalism summary impact statement is not required.

VIII. Analysis of Impacts

The Department has examined the impacts of the direct final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Department believes that this direct final rule is not a significant regulatory action under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this direct final rule simply adjusts the maximum amount of a CMP, and because the adjustment is required by the Inflation Adjustment Act, the Department certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $133 million, using the most current (2008) Implicit Price Deflator for the Gross Domestic Product.[3] The Department does not expect this direct final rule to result in any 1-year expenditure that would meet or exceed this amount.

[3] According to the U.S. Department of Commerce, Bureau of Economic Analysis, the implicit price deflator for gross domestic product was indexed at 92.106 in 1995 (the year of the Unfunded Mandates Reform Act) and 122.422 in 2008. *See http://www.bea.gov/national/nipaweb/* (Table 1.1.9).

List of Subjects in 42 CFR Part 3

Administrative practice and procedure, Civil money penalty, Confidentiality, Conflict of interests, Courts, Freedom of information, Health, Health care, Health facilities, Health insurance, Health professions, Health records, Hospitals, Investigations, Law enforcement, Medical research, Organization and functions, Patient, Patient safety, Privacy, Privilege, Public health, Reporting and recordkeeping requirements, Safety, State and local governments, Technical assistance.

■ For the reasons stated in the preamble, amend part 3 of title 42 of the Code of Federal Regulations as follows:

PART 3—PATIENT SAFETY ORGANIZATIONS AND PATIENT SAFETY WORK PRODUCT

■ 1. The authority citation for part 3 continues to read:

Authority: 42 U.S.C. 216, 299b–21 through 299b–26; 42 U.S.C. 299c–6.

■ 2. Amend § 3.404 by revising paragraph (b) to read as follows:

§ 3.404 Amount of a civil money penalty.

* * * * *

(b) The Secretary may impose a civil money penalty in the amount of not more than $11,000.

Dated: August 18, 2009.

Kathleen Sebelius,

Secretary.

[FR Doc. E9–20419 Filed 8–24–09; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 202, 209, 214, 227, 237, and 252

Defense Federal Acquisition Regulation Supplement; Technical Amendments

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is making technical amendments to the Defense Federal

Acquisition Regulation Supplement (DFARS) to update the list of DoD contracting activities and other references within the DFARS text.

DATES: *Effective Date:* August 25, 2009.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Peterson, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone 703–602–0311; facsimile 703–602–7887.

SUPPLEMENTARY INFORMATION: This final rule amends DFARS text as follows:

- *202.101.* Updates the listings of DoD contracting activities and military departments and defense agencies.
- *209.403, 214.407–3, and 227.7004.* Updates organization names.
- *237.7204.* Updates the fill-in portion of a document format to permit insertion of the calendar year.
- *252.244–7000.* Updates a reference to a contract clause to reflect a revision to the clause that was published at 74 FR 37626 on July 29, 2009.

List of Subjects in 48 CFR Parts 202, 209, 214, 227, 237, and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR Parts 202, 209, 214, 227, 237, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR Parts 202, 209, 214, 227, 237, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 202—DEFINITIONS OF WORDS AND TERMS

■ 2. Section 202.101 is amended by revising the definitions of *Contracting activity* and *Departments and agencies* to read as follows:

202.101 Definitions.

* * * * *

Contracting activity for DoD also means elements designated by the director of a defense agency which has been delegated contracting authority through its agency charter. DoD contracting activities are—

Department of Defense

Counterintelligence Field Activity
Department of Defense Education Activity
TRICARE Management Activity
Washington Headquarters Services, Acquisition and Procurement Office

Army

Headquarters, U.S. Army Contracting Command
Joint Contracting Command—Iraq/Afghanistan
National Guard Bureau
Program Executive Office for Simulation, Training, and Instrumentation
U.S. Army Aviation and Missile Life Cycle Management Command
U.S. Army Communications-Electronics Life Cycle Management Command
U.S. Army Corps of Engineers
U.S. Army Expeditionary Contracting Command
U.S. Army Intelligence and Security Command
U.S. Army Joint Munitions and Lethality Life Cycle Management Command
U.S. Army Medical Command
U.S. Army Medical Research and Materiel Command
U.S. Army Mission and Installation Contracting Command
U.S. Army Research, Development, and Engineering Command
U.S. Army Space and Missile Defense Command
U.S. Army Sustainment Command
U.S. Army Tank-Automotive and Armaments Life Cycle Management Command

Navy

Office of the Deputy Assistant Secretary of the Navy (Acquisition & Logistics Management)
Naval Air Systems Command
Space and Naval Warfare Systems Command
Naval Facilities Engineering Command
Naval Inventory Control Point
Naval Sea Systems Command
Naval Supply Systems Command
Office of Naval Research
Military Sealift Command
Strategic Systems Programs
Marine Corps Systems Command
Installations and Logistics, Headquarters, U.S. Marine Corps

Air Force

Office of the Assistant Secretary of the Air Force (Acquisition)
Office of the Deputy Assistant Secretary (Contracting)
Air Force Materiel Command
Air Force Reserve Command
Air Combat Command
Air Mobility Command
Air Education and Training Command
Pacific Air Forces
United States Air Forces in Europe
Air Force Space Command
Air Force District of Washington
Air Force Operational Test & Evaluation Center
Air Force Special Operations Command
United States Air Force Academy
Aeronautical Systems Center
Air Armament Center
Electronic Systems Center
Space and Missile Systems Center
Defense Advanced Research Projects Agency
Office of the Deputy Director, Management
Defense Business Transformation Agency
Contracting Office
Defense Commissary Agency
Directorate of Contracting
Defense Contract Management Agency
Office of the Director, Defense Contract Management Agency
Defense Finance And Accounting Service
External Services, Defense Finance and Accounting Service
Defense Information Systems Agency
Defense Information Technology Contracting Organization
Defense Intelligence Agency
Office of Procurement
Defense Logistics Agency
Acquisition Management Directorate
Defense Supply Centers
Defense Energy Support Center
Defense Security Cooperation Agency
Contracting Division
Defense Security Service
Acquisition and Contracting Branch
Defense Threat Reduction Agency
Acquisition Management Office
Missile Defense Agency
Headquarters, Missile Defense Agency
National Geospatial-Intelligence Agency
Procurement and Contracting Office
National Security Agency
Headquarters, National Security Agency
United States Special Operations Command
Headquarters, United States Special Operations Command
United States Transportation Command
Directorate of Acquisition

* * * * *

Departments and agencies, as used in DFARS, means the military departments and the defense agencies. The military departments are the Departments of the Army, Navy, and Air Force (the Marine Corps is a part of the Department of the Navy). The defense agencies are the Defense Advanced Research Projects Agency, the Defense Business Transformation Agency, the Defense Commissary Agency, the Defense Contract Management Agency, the Defense Finance and Accounting Service, the Defense Information Systems Agency, the Defense Intelligence Agency, the Defense Logistics Agency, the Defense Security Cooperation Agency, the Defense Security Service, the Defense Threat Reduction Agency, the Missile Defense Agency, the National Geospatial-Intelligence Agency, and the National Security Agency.

* * * * *

PART 209—CONTRACTOR QUALIFICATIONS

209.403 [Amended]

■ 3. Section 209.403 is amended in the definition of *Debarring and suspending official,* in paragraph (1), by removing the entry ''National Imagery and Mapping Agency—The General Counsel'' and adding in its place ''National Geospatial-Intelligence Agency—The General Counsel''.

PART 214—SEALED BIDDING

■ 4. Section 214.407–3 is amended by revising paragraph (e)(v) to read as follows:

214.407–3 Other mistakes disclosed before award.

(e) * * *

(v) National Geospatial-Intelligence Agency: General Counsel, NGA.

* * * * *

PART 227—PATENTS, DATA, AND COPYRIGHTS

227.7004 [Amended]

■ 5. Section 227.7004 is amended in paragraph (c)(7) by removing ''Imagery and Mapping'' and adding in its place ''Geospatial-Intelligence''.

PART 237—SERVICE CONTRACTING

237.7204 [Amended]

■ 6. Section 237.7204 is amended under the heading ''EDUCATIONAL SERVICE AGREEMENT Agreement No. _____'', in paragraph 1., by removing ''19____'' and adding in its place ''____''.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 7. Section 252.244–7000 is amended by revising the clause date and paragraph (a) to read as follows:

252.244–7000 Subcontracts for Commercial Items and Commercial Components (DoD Contracts).

* * * * *

Subcontracts for Commercial Items and Commercial Components (DoD Contracts) (AUG 2009)

* * * * *

(a) 252.225–7009 Restriction on Acquisition of Certain Articles Containing Specialty Metals (10 U.S.C. 2533b).

* * * * *

[FR Doc. E9–20416 Filed 8–24–09; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2009–0151]

RIN 2127–AK44

Federal Motor Vehicle Safety Standards; Air Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This document makes permanent an existing requirement that trailers with antilock brake systems (ABS) be equipped with an external malfunction indicator lamp. The indicator lamp requirement, which is included in the Federal motor vehicle safety standard that governs air-braked vehicles, was originally scheduled to sunset on March 1, 2009, but had previously been extended to September 1, 2009. The agency had established a sunset date for this requirement in light of the increasing numbers of post-2001 tractors which have an in-cab trailer ABS malfunction lamp, making the external trailer lamp redundant. We are making the requirement permanent in light of additional safety purposes served by the external lamp, including: it not only warns the driver of a malfunctioning trailer ABS, but, unlike the in-cab lamps, indicates which trailer in double and trailer applications has a malfunction, and it assists Federal and State roadside inspectors and maintenance personnel in identifying a malfunctioning trailer ABS. This rulemaking was conducted in response to petitions from the Commercial Vehicle Safety Alliance.

DATES: *Effective Date:* This rule is effective August 31, 2009. *Petitions:* Petitions for reconsideration must be received by October 9, 2009.

ADDRESSES: If you wish to petition for reconsideration of this rule, you should refer in your petition to the docket number of this document and submit your petition to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building, Washington, DC, 20590.

The petition will be placed in the docket. Anyone is able to search the electronic form of all documents received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://www.dot.gov/privacy.html.*

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Mr. George Soodoo, Office of Crash Avoidance Standards (Phone: 202–366–4931; FAX: 202–366–7002). For legal issues, you may call Mr. Ari Scott, Office of the Chief Counsel (Phone: 202–366–2992; FAX: 202–366–3820). You may send mail to these officials at: National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Comments
III. Response to Comments and Agency Decision
IV. Rulemaking Analyses and Notices

I. Background

The final rule requiring antilock brake systems (ABS) on truck tractors, other air-braked heavy vehicles including trailers, and hydraulic-braked trucks was published in the **Federal Register** (60 FR 13216) on March 10, 1995. As amended by that final rule, FMVSS No. 121, *Air Brake Systems,* required two separate in-cab ABS malfunction indicator lamps for each truck tractor, one for the tractor's ABS (effective March 1, 1997) and the other for the trailer's ABS (effective March 1, 2001). The final rule also required air-braked trailers to be equipped with an externally mounted ABS malfunction lamp (effective March 1, 1998) so that the driver of a non-ABS equipped tractor or an ABS-equipped tractor manufactured prior to March 1, 2001, towing an ABS-equipped trailer would be alerted in the event of a malfunction in the trailer ABS.

The requirement for the trailer-mounted ABS malfunction indicator lamp was originally scheduled to expire on March 1, 2009. The National Highway Traffic Safety Administration (NHTSA) established this sunset date, based on the assumption that, after this eight-year period, many of the pre-2001 tractors without the dedicated trailer ABS malfunction indicator lamp would no longer be in long-haul service. The agency based its decision on the belief that the typical tractor life was five to seven years, and therefore decided on an eight-year period for the external ABS malfunction indicator lamp requirement. We further stated our belief that there would be no need for a redundant ABS malfunction lamp mounted on the trailer after the vast majority of tractors were equipped with an in-cab ABS malfunction indicator lamp for the trailer.

Before the trailer-mounted ABS malfunction indicator lamp requirement expired, NHTSA received two petitions from the Commercial Vehicle Safety Alliance (CVSA). CVSA is an international not-for-profit organization comprised of local, State, provincial, territorial and Federal motor carrier safety officials and industry

representatives from the United States, Canada, and Mexico.

On October 22, 2007, CVSA petitioned NHTSA to make the trailer-mounted external antilock malfunction indicator lamp permanent instead of allowing it to expire. CVSA included in its petition suggested regulatory text along with its rationale for why the extension should be permanent. On October 15, 2008, CVSA again petitioned NHTSA to amend FMVSS No. 121, requesting that the agency issue a stay of the sunset date of March 1, 2009 for the external ABS warning lamp. CVSA stated that a stay would prevent a time gap in the regulation, while NHTSA continued to evaluate CVSA's 2007 petition. CVSA stated that the vehicle inspection process has already been complicated by the phased-in ABS and ABS malfunction indicator lamp requirements, and a time gap would further complicate the inspection process and cause additional confusion for drivers and maintenance personnel.

On March 3, 2009, the agency concurrently published an interim final rule extending the sunset date for the requirement by six months, to September 1, 2009 (74 FR 9173), and a notice of proposed rulemaking (NPRM) to extend the requirement to March 1, 2011 (74 FR 9202). In the latter notice, the agency explained that it expected to be able to fully analyze the issues raised by the CVSA petitions and further address them prior to March 1, 2011. The agency also indicated that if it was able to fully resolve the outstanding issues it could make the requirement permanent in a final rule based on the NPRM.

The rationale put forth by CVSA, in its 2007 petition, for making the requirement permanent included four points. The first point was that there were still expected to be many pre-2001 tractors in use when the malfunction indicator lamp requirement was set to expire (at the time, March 1, 2009). These tractors do not have the in-cab trailer ABS malfunction indicator lamp that was perceived to render the external lamp redundant. Second, CVSA argued that for double and triple trailer applications, it will not be possible to determine, from an in-cab lamp alone, which trailer ABS is malfunctioning without external lamps. Third, CVSA stated that many trailer repair shops rely on the external lamp to quickly diagnose the operational status of the trailer ABS without having to couple a post-2001 tractor to the trailer. With an external indicator lamp, any age tractor can be used, making inspection significantly easier. Fourth, the petition argued that without the external lamp, the signal from the in-cab lamp may be confusing, as it may indicate either a malfunctioning in-cab bulb, a functioning pre-1998 trailer (with no ABS), a problem with the communication circuit between the trailer and tractor, or a malfunctioning ABS. The external lamp helps to diagnose the situation further.

II. Summary of Comments

Overview

NHTSA received a number of comments in response to the two March 3, 2009 **Federal Register** notices. All commenters addressing the issue supported the extension provided in the interim final rule and some further extension, with varying time periods for the further extension.

The American Trucking Associations (ATA), a trade association representing trucking companies, supported extending the trailer external lamp requirement until March 1, 2011, the date proposed in the NPRM, but argued against making the requirement permanent. The Truck Trailer Manufacturers Association (TTMA) supported extending the requirement to March 1, 2010. The American Moving and Storage Association (AMSA), which represents moving services and handlers of specialized freight, supported extending the requirement through 2011 in order to prevent a ''gap'' in the requirements, but did not offer a position on whether the requirement should be made permanent.

Two associations submitted comments supporting the permanent extension of the requirements, the Heavy Duty Brake Manufacturers Association (HDMA), which represents manufacturers of braking systems and components, and the Owner-Operator Independent Drivers Association (OOIDA).[1] Other commenters supporting a permanent extension of the external lamp requirement included Meritor WABCO, a supplier of air and hydraulic antilock brake systems (ABS), air disc brakes, air compressors, brake control valves and electronic components for medium and heavy duty trucks, buses, and trailers, and Advocates for Highway and Auto Safety (Advocates). CVSA, the petitioner, also submitted comments supporting a permanent extension.

NHTSA also received information from the University of Michigan Transportation Research Institute (UMTRI).

[1] The OOIDA comment was submitted prior to NRPM in support of the CVSA petition.

Whether at Least a Limited Extension Is Needed

Every commenter addressing the issue, with one exception, supported extending the external malfunction indicator lamp requirement to at least March 1, 2011. TTMA supported a shorter extension, to March 1, 2010, to coincide with the sunset date of the external lamp requirement in Canada. AMSA, making an argument for continuity of the requirement, stated that it supported the extension until 2011 because it would be extremely disruptive for carriers to cease current maintenance of external ABS indicators, and then be required to resume the current practices at a later date.

Several commenters provided data indicating that relatively large numbers of pre-2001 tractors are still in use, and that therefore there is still at least a temporary need for the trailer-mounted lamp. The HDMA provided information from R.L. Polk & Co. regarding vehicle age date, which stated that 58.5 percent of registered tractors were built prior to March 1, 2001.[2] Meritor WABCO also provided this figure in its comments. Information obtained from UMTRI, Center for National Truck and Bus Statistics, also provided information on the numbers of pre-2001 tractors in use. UMTRI analyzed two crash data files to estimate the proportion of tractors with model year 2000 and prior: (1) The General Estimates System (GES) file compiled by NHTSA, which is a nationally representative sample file of all police-reportable traffic crashes, and (2) the Trucks Involved in Fatal Accidents (TIFA) file, compiled by UMTRI, which is a census of all medium and heavy trucks involved in fatal crashes in the U.S. Based on accident analysis from the GES and the TIFA file, UMTRI estimated that 29–30 percent of the exposed population of tractors has a model year of 2000 or earlier.[3] The ''exposure'' in crashes is primarily related to vehicle miles traveled.

Whether the Requirement Should Be Made Permanent

We note that the decision whether to make the requirement for the external trailer lamp permanent presents different issues than a temporary extension. There are two potential reasons for a temporary extension. First, as discussed in the NPRM, an extension to March 1, 2011 would give the agency additional time to do further analyses

[2] Docket NHTSA–2009–0038–0009, p. 2, available at *http://www.regulations.gov.*

[3] Docket NHTSA–2009–0038–0017, p. 3, available at *http://www.regulations.gov.*

related to CVSA's request for a permanent extension, while avoiding a potential confusing time gap in the vehicles subject to the requirement. Second, even if NHTSA did not make the existing requirement permanent, a further temporary extension could be needed given the relatively large numbers of pre-2001 tractors that are still in use. Since the numbers of pre-2001 tractors will over time become increasingly small, the case for a permanent requirement is predicated on the benefits that the external lamp provides even when coupled with the in-cab trailer ABS indicator present on tractors built after March 1, 2001.

A number of commenters which supported CVSA's petition to make the external lamp requirement permanent cited the utility of the external lamp for trailer inspection and diagnostic purposes. There were several reasons given in the comments, including benefits related to redundancy of the external lamp, the lamp serves to facilitate inspections and repair of trailer ABS, and the utility of the lamp in multiple trailer applications. Additionally, several commenters noted the centrality of a functioning ABS with regard to recent safety developments, such as electronic stability control (ESC) systems, that could be negatively impacted by faulty ABS.

One reason given to support the permanent extension of the external lamp is simple redundancy and utility of the external lamp, with Advocates noting that ''if a combination vehicle * * * suffers loss of the in-cab ABS malfunction indicator, the only fail-safe means on the road of determining whether the ABS is still functioning is the external trailer, semi-trailer, or dolly ABS lamp.'' [4] Similarly, OOIDA stated that the external lamp provides a ''reliable and readily identifiable method for drivers, roadside inspectors, and maintenance personnel to determine the operational status of the affected towed units.'' [5] CVSA commented on the multitude of possible vehicle systems dependent on functioning ABS, such as rollover stability systems, electronic stability control, and adaptive cruise control, as adding importance to the ability of various parties to identify malfunctioning ABS in trailers.

In arguing against a permanent extension of the requirement, the ATA used the redundancy argument as well. ATA stated that it believes the extension for the ABS warning lamp is warranted so long as there are still tractors operating without functional in-cab systems. As to a permanent extension, however, it argued that the in-cab malfunction indicator lamp is a more useful warning signal to drivers than the external lamp, and that it does not believe the external trailer ABS malfunction lamp should be required on trailers matched with tractors with in-cab systems beyond 2011 solely as an aid for roadside inspection. ATA also stated that there are other tools to check the trailer ABS at a roadside inspection, if monitoring the in-cab dash warning lamp is not practical or safe for the inspector. Acknowledging that the external lamp did have some value, the ATA stated that some of its members wanted the light continued as an option, especially those who operate double and triple trailer combinations (discussed below).

Commenters including Meritor WABCO stated that the external lamp enhances the inspection and maintenance of ABS on trailers and dollies. Meritor WABCO pointed out a recent Federal Motor Carrier Safety Administration study indicating that 15 percent and 30 percent of tractor and trailer ABS, respectively, indicated potential operational problems,[6] implying that additional means to identify and correct these problems should be considered. Meritor WABCO cited a NHTSA statement that the intent of the lamp was, in part, to ''to inform operators * * * and to facilitate * * * and * * * encourage repairs of faulty ABS systems.'' [7] Meritor WABCO also stated that when conducting diagnostics, the lack of a trailer-mounted indicator would require that a trailer be coupled to a post-2001 tractor in order to determine the status of the trailer ABS. Similarly, in its comments to the original 2007 CVSA petition, TTMA noted that ''the lamp mounted externally allows additional people such as shop personnel to see if the ABS system is operable.'' [8] CVSA reiterated this argument from its petition in its comments submitted to NHTSA. And even though it argued against making the lamp requirement permanent, in its comments, the ATA noted that the external lamp helped in troubleshooting problems.

Several commenters emphasized that the external malfunction indicator lamp provides more pertinent information than the in-cab lamp with regard to multiple trailer configurations, where a single tractor tows two or three trailers, each equipped with an ABS. This is because while the in-cab lamp may indicate a malfunction, it will not provide specific information as to which trailer is experiencing a malfunctioning ABS. While it did not support making the requirement permanent, in its comment the ATA noted that members with multiple trailer operations found the external lamp useful for troubleshooting. Advocates and CVSA also made this argument, with Advocates stating that ''on multi-trailer combinations when each trailer is fitted with ABS, a driver needs to be able to verify that each trailing unit has operable ABS.'' [9]

Finally, Meritor WABCO provided some guidance in its comments with regard to the cost of the external lamp. Specifically, the commenter stated that ''all trailer wiring harnesses have been modified to accommodate the indicator lamp so making it a permanent requirement would not require any additional changes of expense to the vehicle OEMs or the end user.'' [10] Furthermore, the ATA comment stated that improvements in the external lamp circuit have eliminated previous maintenance issues that had caused expenses.[11]

III. Response to Comments and Agency Decision

After carefully considering the comments, and for the reasons discussed below, we have decided to make the requirement that trailers with ABS be equipped with an external antilock malfunction indicator lamp permanent.

We are making this decision because the external lamp provides information that assists maintenance personnel and roadside inspectors, provides important diagnostic information, and provides detailed important information for multiple trailer applications. NHTSA believes that these benefits of the external lamp warrant the permanent extension of the requirement.

We believe that trailer maintenance operations would be inconvenienced by having to couple a trailer to a post-2001 tractor or use additional specialized equipment in order to diagnose the state of a trailer's ABS, when right now a standardized trailer-mounted lamp

[4] 0038–0013, p. 2.

[5] Docket NHTSA–2009–0038–0019, available at *http://www.regulations.gov.*

[6] Docket NHTSA–2009–0038–0008, p. 2, available at *http://www.regulations.gov.*

[7] 71 FR 7614, Feb 13, 2006.

[8] Docket NHTSA–2009–0038–0004, available at *http://www.regulations.gov.* We note that this comment was superseded by the comment submitted April 2, 2009 (Docket NHTSA–2009–0038–0016).

[9] Docket NHTSA–2009–0038–0013, p. 2, available at *http://www.regulations.gov.*

[10] Docket NHTSA–2009–0038–0008, p. 1, available at *http://www.regulations.gov.*

[11] Docket NHTSA–2009–0038–0014, p. 2, available at *http://www.regulations.gov.*

provides the same information. This inconvenience could diminish the effectiveness of some maintenance operations. Furthermore, the external lamps provide otherwise-unavailable information to both drivers and roadside inspectors with regard to multiple trailer combinations. Without them, the in-cab information can only indicate the existence of a malfunctioning trailer ABS. The external lamps can pinpoint which trailer's ABS is malfunctioning, allowing drivers or inspectors to take the appropriate remedial action.

We note that since we are making the requirement permanent because of the benefits the external lamp provides even when coupled with the in-cab trailer ABS indicator present on tractors built after March 1, 2001, it is unnecessary to address the numbers of pre-2001 tractors that are still in use.

As indicated above, we stated in the NPRM that we might make the requirement permanent if we could fully resolve the outstanding issues. We have specifically considered whether there are any unresolved issues for which additional analysis would be beneficial to the agency in reaching a decision on this issue. We have concluded that there are no issues for which further analyses are needed prior to making a decision. All trailers manufactured after March 1, 1998 have already been required to comply with the requirement, so manufacturers and users are familiar with these systems. Furthermore, all trailer wiring harnesses have already been modified to accommodate the external lamp, and there are relatively few maintenance issues, thereby minimizing the costs of this requirement. Finally, Federal and State inspectors and maintenance operations successfully use the lamps as part of their current procedures in order to obtain the benefits discussed in this document.

In stating that we are making the existing requirement permanent, we do not mean to imply that we would not readdress this issue in future rulemaking if new developments were to make the requirement unnecessary. In its comments, ATA stated that in the future, wireless transmissions of the vehicle fault messages will be the means of inspection which will make external malfunction lamps obsolete. Our decision today reflects current designs and inspection and maintenance practices developed in light of those designs. If future designs and new inspection and maintenance practices should make the external malfunction lamps obsolete, we will take appropriate action at that time.

We find good cause for making today's final rule effective on August 31, 2009. This is necessary to avoid a confusing time gap in the vehicles subject to the requirement. Moreover, since trailer manufacturers are required to meet the requirement for the trailers they are currently manufacturing, this effective date will not result in any new burdens.

IV. Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This action was not reviewed by the Office of Management and Budget under E.O. 12866. The agency has considered the impact of this action under the Department of Transportation's regulatory policies and procedures (44 FR 11034; February 26, 1979), and has determined that it is not ''significant'' under them.

This document makes permanent the existing antilock malfunction indicator lamp requirement, which had been scheduled to expire September 1, 2009. When the agency published its March 10, 1995 Final Rule, we estimated the costs of the lamp and the associated wiring to be approximately $9.43 (in 2007 dollars $12.82). In 2007 dollars, assuming 189,000 trailer units and that same unit costs we estimate the total cost to be approximately $2.4 million per year. However, we note that since all trailers manufactured after March 1, 1998 have already been complying with the requirement and that the agency is merely making permanent the requirement, the impact on costs is likely much lower than this figure indicates. While not supplying a lamp could result in a trailer that could be made for a few dollars less, we estimate the costs to be so minimal that preparation of a full regulatory evaluation is not required.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* NHTSA has evaluated the effects of this action on small entities. I hereby certify that this rule will not have a significant impact on a substantial number of small entities. This document merely makes permanent the requirement for an external indicator lamp in FMVSS No. 121. No other changes are made. Small organizations and small government units will not be significantly affected since this action will not affect the price of new motor vehicles. Trailer manufacturers will not be required to install new systems but rather continue to install the systems they are already installing.

Executive Order 13132 (Federalism)

NHTSA has examined today's rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The agency has concluded that the rule does not have federalism implications because it does not have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Further, no consultation is needed to discuss the issue of preemption in connection with today's rule. The issue of preemption can arise in connection with NHTSA rules in at least two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision: ''When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter.'' 49 U.S.C. 30103(b)(1). It is this statutory command that unavoidably preempts State legislative and administrative law, not today's rulemaking, so consultation would be unnecessary.

Second, the Supreme Court has recognized the possibility of implied preemption: in some instances, State requirements imposed on motor vehicle manufacturers, including sanctions imposed by State tort law, can stand as an obstacle to the accomplishment and execution of a NHTSA safety standard. When such a conflict is discerned, the Supremacy Clause of the Constitution makes the State requirements unenforceable. *See Geier* v. *American Honda Motor Co.,* 529 U.S. 861 (2000). However, NHTSA has considered the nature and purpose of today's rule and does not currently foresee any potential State requirements that might conflict with it. Without any conflict, there could not be any implied preemption.

Executive Order 12988 (Civil Justice Reform)

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, February 7, 1996) requires that Executive agencies make every reasonable effort to ensure that the

regulation: (1) Clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

Pursuant to this Order, NHTSA notes as follows. The issue of preemption is discussed above in connection with E.O. 13132. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

Protection of Children From Environmental Health and Safety Risks

Executive Order 13045, ''Protection of Children from Environmental Health and Safety Risks'' (62 FR 19855, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental, health, or safety risk that the agency has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency.

This rule is not expected to affect children and it is not an economically significant regulatory action under Executive Order 12866. Consequently, no further analysis is required under Executive Order 13045.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. There is not any information collection requirement associated with this rule.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, (15 U.S.C. 272) directs the agency to evaluate and use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or is otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers. The NTTAA directs us to provide Congress (through OMB) with explanations when we decide not to use available and applicable voluntary consensus standards. There are no voluntary consensus standards developed by voluntary consensus standards bodies pertaining to this rule.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or Tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). This rule will not result in expenditures by State, local or Tribal governments, in the aggregate, or by the private sector in excess of $100 million annually.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

Executive Order 13211

Executive Order 13211 (66 FR 28355, May 18, 2001) applies to any rulemaking that: (1) Is determined to be economically significant as defined under E.O. 12866, and is likely to have a significantly adverse effect on the supply of, distribution of, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. This rulemaking is not subject to E.O. 13211.

Regulatory Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://www.regulations.gov*.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, and Tires.

■ In consideration of the foregoing, NHTSA is amending 49 CFR part 571 as set forth below.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.121 is amended by revising S5.2.3.3(a) to read as follows:

§ 571.121; Standard No. 121; Air brake systems.

* * * * *

S5.2.3.3 *Antilock malfunction indicator.*

(a) In addition to the requirements of S5.2.3.2, each trailer and trailer converter dolly shall be equipped with an external antilock malfunction indicator lamp that meets the requirements of S5.2.3.3 (b) through (d).

* * * * *

Issued: August 19, 2009.

Ronald L. Medford,

Acting Deputy Administrator.

[FR Doc. E9–20387 Filed 8–24–09; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 071121736–91118–03]

RIN 0648–AR78

Magnuson-Stevens Act Provisions; Experimental Permitting Process, Exempted Fishing Permits, and Scientific Research Activity

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues new and revised definitions for certain regulatory terms, and procedural and technical changes to the regulations addressing scientific research activities, exempted fishing, and exempted educational activities under the Magnuson-Stevens Fishery Conservation and Management Act (MSA). This action is necessary to provide better administration of these activities and to revise the regulations consistent with the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (MSRA). NMFS intends to clarify the regulations, ensure necessary information to complete required analyses is requested and made available, and provide for expedited review of permit applications where possible.

DATES: Effective September 24, 2009.

ADDRESSES: Written comments regarding burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be sent to Alan Risenhoover, Director, Office of Sustainable Fisheries, 1315 East-West Highway, SSMC3, Silver Spring, MD 20910, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 (Attn: NOAA Desk Officer), or email to *David__Rostker@omb.eop.gov*, or fax to (202) 395–7285.

Copies of the categorical exclusion (CE) prepared for this action are available from NMFS at the above address or by calling the Office of Sustainable Fisheries, NMFS, at 301–713–2341.

FOR FURTHER INFORMATION CONTACT: Jason Blackburn at 301–713–2341, or by e-mail at *jason.blackburn@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background and Need for Action

On January 12, 2007, the MSRA was enacted. Section 204 of the MSRA added a new Cooperative Research and Management Program section (section 318) to the MSA. Section 318(d) of the revised MSA requires that the Secretary, through NMFS, ''promulgate regulations that create an expedited, uniform, and regionally-based process to promote issuance, where practicable, of experimental fishing permits.'' Under the 1996 exempted fishing regulations, exempted and experimental fishing were treated synonymously as the terms had been used interchangeably in the regions. (March 15, 1996, 61 FR 10712 and May 28, 1996, 61 FR 26435) This rulemaking continues the practice of using the terms interchangeably.

A proposed rule with revisions and updates to the regulations addressing scientific research activities, exempted fishing, and exempted educational activities was published in the **Federal Register** on December 21, 2007 (72 FR 72657), with a comment period ending on March 20, 2008. An extension of the comment period was published on March 18, 2008 (73 FR 14428) that extended the comment period to April 4, 2008. The extension of the comment period for an additional 15 days was intended to ensure that NMFS provided adequate time for fishery management councils, stakeholders and members of the public to comment on the proposed revisions.

Comments and Responses

A total of 18 relevant comment letters were received from regional fishery management councils, environmental organizations, industry representatives, research institutions, and other members of the public. These comments are summarized below.

Compensation Fishing

Comment 1: Several commenters had questions about how compensation fishing can be authorized, including when it requires an EFP.

Response: Compensation fishing is authorized under section 402(e) of the MSA. Historically, the primary purpose of compensation fishing has been to compensate scientific research vessel owners or operators for participating in NMFS sponsored resource surveys. More recently, compensation fishing has also been authorized to compensate vessels participating in scientific research projects conducted by non-governmental institutions where additional fish, outside of the scope of the scientific research plan, are needed to fund the research. The amount of fish caught during scientific research activities must be limited to only that which is necessary to meet the needs of the research, i.e., the amount identified in the scientific research plan as the necessary sample size to support a robust analysis. Any additional fish needed to compensate vessels for their participation requires evaluation of the effects of this additional mortality on the affected stock(s), for example, to ensure that overfishing does not occur, consistent with National Standard (NS) 1, the NS1 Guidelines, and MSA section 303(a)(15). The following scenarios are provided to assist in determining whether or not compensation fishing requires an EFP: (1) For research projects where the additional mortality associated with the compensation fishing has already been evaluated in a Fishery Management Plan (FMP) or FMP action, which allocates a set amount of fish to a research set-aside (RSA) and includes analysis of the impacts of the action (such as the annual specifications process used for the Mid-Atlantic Council's fisheries), no further analysis is required, and the compensation fishing may not require an EFP, depending on whether exemptions from existing regulations would be requested (e.g., possession limits, seasonal closures, etc.); (2) for research projects where compensation fishing would be consistent with the regulations for the fishery, the compensation fishing would not require an EFP; and (3) for research projects where the additional mortality associated with the compensation fishing has not been evaluated, or where the proposed compensation fishing would require an exemption from a fishery regulation, such as fishing during a closed season or retaining catch in excess of allowable limits, the compensation fishing would require an EFP.

Comment 2: One commenter asked for clarification about whether a contract for compensation fishing can be used in lieu of an EFP outside of the RSA program.

Response: A contract entered into by NMFS to conduct compensation fishing does not exempt the participating vessel(s) from any fishing regulations. An EFP is always required for any fishing activity that would, or has the potential to, violate any fishing regulation (e.g., fishing during a closure or in excess of a possession limit), unless the fishing activity has been approved to be conducted in concert with a scientific research activity that was issued a scientific research permit or a letter of acknowledgment.

Comment 3: Two commenters suggested that creating a new compensation fishing permit would help to streamline the process by alleviating the lengthy EFP review process.

Response: Any permit issued by NMFS is a Federal action, and as such must comply with any and all applicable laws, including the Endangered Species Act (ESA), the Marine Mammal Protection Act (MMPA), and the National Environmental Policy Act (NEPA). Therefore, a separate permit for compensation fishing would require the same review process as an EFP, and would not streamline the process.

Comment 4: Two commenters suggested that NMFS should streamline issuance of an EFP for compensation fishing by issuing the EFP at the same time as the Letter of Acknowledgment (typically occurring when projects utilize multiple vessels to conduct scientific research and compensation fishing), or by combining the EFPs for the principle investigator (PI) and the vessels.

Response: The time frame involved in reviewing applications and issuing Letters of Acknowledgment and EFPs is very different, because issuing an EFP is a Federal action requiring compliance with other applicable laws, while providing a Letter of Acknowledgment does not trigger the same requirements. Issuing both at the same time would essentially delay the receipt of the Letter of Acknowledgment, thus potentially delaying the start of the scientific research. The decision to combine, or not combine, the EFPs for the PI and the vessels should be handled on a case-by-case basis by the Regional Administrator or Director. In the Mid-Atlantic RSA program, the vessels participating in a given project are often listed on one EFP, which is issued to the PI. Other programs and regions may find that a different approach works better under their particular circumstances. Vessels participating in a scientific research activity or compensation fishing should be identified in the Letter of Acknowledgment and/or EFP. It is the PI's responsibility to manage the project and to ensure that all aspects of the project are carried out in accordance with the scientific research plan and the EFP. No research or compensation fishing should occur until the PI has coordinated with the vessel and provided the vessel with a copy of the Letter of Acknowledgment and/or EFP.

Conservation Engineering

Comment 5: Many commenters raised concerns about how the two terms, ''conservation engineering'' and ''gear testing,'' appear to limit the types of cooperative research projects that would be allowed, or not allowed, particularly in light of the very restrictive ''gear testing'' definition. This caused particular concern for researchers who conduct catch rate comparisons as part of their research protocols. One commenter agreed that the distinction between ''conservation engineering'' and the ''testing of gear'' needs to be clarified.

Response: The definition of ''scientific research activity'' states that such activity does not include ''the testing of fishing gear.'' As a result, people have obtained EFPs for many projects that might otherwise be considered scientific research. In the proposed rule, NMFS intended the narrow definition of ''gear testing,'' coupled with the new definition of ''conservation engineering,'' to allow more projects to be considered scientific research activities that would not require an EFP because scientific research activities are outside of the scope of the MSA. Additionally, the proposed rule referred to testing modified gear as conservation engineering instead of ''gear testing.'' Due to the breadth of concerns raised about the definition of gear testing, and because the term is often used synonymously with conservation engineering, NMFS removed the definition of gear testing from the final rule. Therefore, as clarification, NMFS emphasizes that according to the MSA definition of fishing, scientific research activities are not fishing. Accordingly, conservation engineering activities that also meet the definition of scientific research activity are not fishing. Alternatively, conservation engineering activities that do not meet the definition of scientific research activity, but that do meet the definition of fishing are fishing, and must be conducted under an EFP if the activity would otherwise be prohibited by regulations under part 600.

Comment 6: Three commenters suggested that the phrase ''efficient harvest of target species'' in the definition of ''conservation engineering'' should be interpreted broadly to include projects that focus on environmental efficiency, such as testing methods to reduce fuel consumption and greenhouse gas emissions.

Response: This phrase comes directly from MSA section 404(c)(2). As such its intent is clearly fisheries conservation, and not other forms of environmental conservation, which are outside the scope of the MSA and these regulations. Fishermen will take steps to reduce fuel consumption and increase efficiency in the course of their normal business.

Comment 7: Two other commenters focused on the phrase ''efficient harvest of target species'' in the definition of ''conservation engineering.'' One suggested that the phrase should be revised so that it does not encourage increased catch efficiency, while the other suggested that conservation engineering work should focus on minimizing bycatch while maintaining or increasing target catches.

Response: ''Conservation engineering'' is defined in the regulations as relating to fisheries conservation and the research being conducted to minimize the unintended impacts of fishing. The phrase ''efficient harvest of target species'' needs to be considered in the context of ''conservation engineering,'' which includes ''the study of fish behavior and the development and testing of new gear technologies and fishing techniques that reduce collateral effects, such as minimizing bycatch and any adverse effects on EFH.'' This definition is intended to promote research that focuses on ways to harvest target species in a manner that conserves and reduces impacts on non-target species. The definition is not intended to promote research that focuses on catching more of the target species.

Comment 8: Another commenter was concerned that the phrase ''minimizing bycatch and any adverse affects on EFH'' in the definition of ''conservation engineering'' might be misconstrued as examples of ''collateral effects.''

Response: To alleviate possible misunderstandings, the reference to ''collateral effects'' has been removed from the definition, and the language of MSA section 404(c)(2) has been used verbatim.

Comment 9: One commenter raised concern that some activities that have typically required an EFP in the past may be reclassified as scientific research and would now receive a Letter of Acknowledgment and not have to go through the Council review process associated with EFP proposals.

Response: The new definition of ''conservation engineering'' and the associated revision of the definition of ''scientific research activity'' are provided to assist the Regional Administrator or Director in determining whether an activity is, or is not, scientific research. This determination is a matter of interpretation, and the changes to these definitions are provided for clarity. If an activity that would otherwise be considered fishing is determined to be

scientific research, then it is not regulated by the MSA.

Comment 10: One commenter inquired about whether or not ''conservation engineering'' includes the deployment of modified fishing gear under conditions similar to commercial fishing to assess the effectiveness of the modifications and to make comparisons to gear allowed under regulations.

Response: The expectation is that some conservation engineering projects will indeed need to conduct activities such as those described above in order to scientifically verify the effectiveness of the modified gear. It is very important that the amount of fish taken during such activities be kept to the minimum necessary to achieve a scientifically robust analysis while conserving the resource, and that any mortality is accounted for consistent with NS1, the NS1 Guidelines, and MSA section 303(a)(15), as well as other MSA provisions and other applicable laws, including the ESA. Any additional fish used as compensation for conducting the research must be caught either by fishing consistent with existing regulations or through compensation fishing, which must be approved by NMFS. The definition of conservation engineering has been revised to identify the activity as the development and assessment of fishing technologies and fishing techniques designed to conserve target and non-target species. The language of MSA section 404(c)(2) is then provided as an example of conservation engineering.

Comment 11: Two commenters inquired about what is meant by ''new'' gear technologies in the definition of ''conservation engineering.''

Response: To clarify this point, NMFS added additional language to the definition to indicate that conservation engineering may include the development and assessment of new gear technologies as well as the assessment of existing technologies applied in novel ways. An example would be assessing the ability of a bycatch reduction device (BRD), designed and proven in one fishery, to reduce bycatch in another fishery.

Comment 12: Two commenters suggested that NMFS should ensure that EFPs produce meaningful results and provide information that will advance fishery management, and that the regulations should include a list of requirements for EFPs similar to that provided for conservation engineering and scientific research activities. Another commenter suggested that we remove the requirement that these activities address a testable hypothesis, as this undercuts the validity of resource surveys, which do not test a hypothesis but instead make scientific observations.

Response: An EFP is a permit issued for an exemption from one or more fishery regulations. There are many reasons for requesting an EFP. Not all EFPs are issued for research purposes or to obtain information for fishery management purposes. The proposed rule included a discussion of conservation engineering and the distinctions between fishing activities that require an EFP and scientific research activities that do not, where a Letter of Acknowledgment is appropriate. Not all scientific research involves testing a hypothesis. Resource surveys by their nature record observations instead of testing a hypothesis. The MSA mandates in section 318(d) that the process be regionally-based. Councils can set research priorities for the fisheries that they manage. It is appropriate to leave the decision regarding the merits of each EFP proposal to the Regional Administrator or Director, with input from the relevant Council and the public obtained during the public comment process.

Comment 13: Three commenters suggested that the discussion about mortality associated with conservation engineering was characterized with unsupported statements and generalizations, and that in some cases the mortality has already been accounted for under the relevant FMP(s).

Response: The proposed rule preamble described conservation engineering and included a description of NMFS concerns about the impacts of conservation engineering activities and the associated mortality. Conservation engineering activities may catch substantial amounts of fish. For example, when conducting catch rate comparisons between experimental and control gear, projects often conduct multiple sets of tows to compare catches. The mortality associated with conservation engineering work needs to be properly accounted for and analyzed, consistent with NS1, the NS1 Guidelines, and MSA section 303(a)(15). If the activity is scientific research, then the activity is not regulated under the MSA, but the mortality should be analyzed under the relevant FMP(s) as scientific research mortality. If the activity is fishing and the fish are landed against the appropriate quota, then the mortality has already been analyzed as part of the FMP action that set the quota (this includes RSA programs). If the activity is fishing and is being conducted under an EFP, then the mortality should be analyzed as part of the EFP application if it has not already been analyzed elsewhere.

Scientific Research Activity

Comment 14: Several commenters raised concerns with various aspects of the definition of scientific research activity. Some comments focused on the distinction between scientific research and fishing. It was suggested in several comments that work done under an EFP is not considered to be scientific, that there is a perception that EFPs amount to a lower standard of research, and that EFPs are used as a ''catch all'' for projects that do not meet the specifics of the definition of scientific research.

Response: Scientific research is not regulated by the MSA, and as such it is exempt from fisheries regulations. A definition of scientific research activity is provided to clarify what activities would qualify for such an exemption. Fishing activities that do not meet the definition of scientific research activity, and are prohibited by fishery regulations, require an EFP to exempt the activity from the relevant regulations. The determination that an EFP is necessary does not denigrate the scientific nature of an activity; it simply indicates that some aspect of the activity requires an exemption.

Comment 15: Two commenters inquired about whether or not the fish caught during a research activity can be sold.

Response: Only fish that are caught during a scientific research activity that is within the scope of the scientific research plan may be sold. Under the MSA scientific research activity on board a scientific research vessel is not fishing. Therefore, the sale of fish caught and retained during a scientific research activity that is within the scope of the research plan is not fishing or commercial fishing as defined by the MSA, and the sale of such fish does not change the scientific activity to fishing. Alternatively, the retention and sale of fish exceeding the scope of the research plan is fishing and requires the appropriate permits.

Scientific Research Vessel

Comment 16: Eleven of the 18 commenters had a comment regarding the utilization of commercial fishing vessels as research platforms and many suggested that commercial fishing vessels should be specifically included in the definition of ''scientific research vessel.'' Many of the comments focused on the ownership or chartering of vessels and on the misconception that commercial fishing vessels can not be

utilized as scientific research vessels under the current regulations.

Response: There were no revisions to the definition of scientific research vessel in the proposed rule. Under current regulations, a commercial fishing vessel can be utilized as a scientific research vessel if: (1) The activities on board the vessel meet the definition of scientific research activity; and (2) the vessel is ''owned or chartered by, and controlled by, a ... U.S. Government agency ... U.S. state or territorial agency, university ... or scientific institution.'' To date, the evaluation of proposals and the types of vessels being utilized as research platforms has been handled on a case-by-case basis by the Regional Administrator or Director. In some cases, state agencies and scientific institutions conducting research on board commercial fishing vessels have been required to obtain an EFP, while in other cases universities conducting similar research have received a Letter of Acknowledgment. These types of situations have been misconstrued to mean that commercial fishing vessels can not be utilized as research platforms without obtaining an EFP, when in fact that is not the case. Often the more important qualifier is the level of accreditation and/or scientific standing of the scientific institution. NMFS recognizes the importance of having the ability to conduct scientific research on board commercial fishing vessels, both for convenience as well as for necessity of the research. Commercial fishing vessels have been, and may continue to be, utilized as scientific research platforms. The decision to recognize this activity under a Letter of Acknowledgment versus requiring that an EFP be obtained should remain under the purview of the Regional Administrator or Director, be determined on a case-by-case basis, and be based on the merits of the individual proposal and the institution(s) involved, i.e., whether the proposed activity meets the definition of scientific research activity, and whether the vessel meets the definition of scientific research vessel. Allowing the Regional Administrator or Director to make this determination meets the ''regionally-based'' mandate in MSA section 318(d). Language to this effect has been added to the definition of scientific research vessel that incorporates ''commercial fishing vessels'' and states that Letter of Acknowledgment versus EFP determinations should be made by the Regional Administrator or Director.

General Comments

Comment 17: Two commenters suggested the introduction of a new term and concept, a NMFS-approved scientific research plan. Under this concept, the scientific research plan would be the document that would be used to determine whether the proposed activity: (1) should be considered a scientific research activity and be recognized with a Letter of Acknowledgment; or (2) should not be considered a scientific research activity and therefore may require an EFP. Using this concept, if NMFS approves the scientific research plan as part of a grant proposal review or other approval process, then the proposal should be deemed a scientific research project, and no further review, approval, or permit should be required.

Response: The determination made by the Regional Administrator or Director, as to whether a project is a scientific research activity, is separate and distinct from the decisions made to fund a project. While funding approval indicates that the project has merit, it does not evaluate the project in the context of the relevant fishery regulations. To create a system to do both would require a major reworking of the existing programs and their processes, and the involvement of all the affected programs. This is beyond the scope of this rulemaking.

Comment 18: Five commenters raised concerns with the proposed exemption of projects funded by quota set-asides from the requirement to publish separate notices in the **Federal Register**, even though notice has already been published in the **Federal Register** as part of the annual specifications process for a program, such as the Mid-Atlantic RSA program. The primary concerns were that this exemption would effectively block a Council's ability to comment on these proposals, and that it may hinder the ability of other concerned parties to comment on the proposed activities.

Response: NMFS agrees that it is important to ensure that the Councils and the public have the ability to comment on all EFP proposals. Therefore, the exemption has been removed from the rule. In addition to NMFS publishing a notice in the **Federal Register** for EFP proposals, Councils may take public comments on EFP proposals at Council meetings, providing additional opportunities for public comment.

Comment 19: One commenter supported the proposed change to the regulations requiring that the Regional Administrator or Director withhold a Letter of Acknowledgment if they determined that the proposed research activity may require a permit or consultation under ESA, MMPA, or other applicable law, while another commenter was against this approach, indicating that it restricts the Regional Administrator or Director's ability to issue a Letter of Acknowledgment and that it would likely cause delays.

Response: To address these concerns, an alternate approach has been selected that allows the Regional Administrator or Director to provide the applicant with a Letter of Acknowledgment in these cases, but requires that they include text in the Letter of Acknowledgment informing the applicant that they may require a permit or consultation under other laws.

Comment 20: One commenter suggested that these regulations should clarify which activities are commercial fishing, and which are not, for purposes of the MMPA.

Response: Throughout the final rule, clarification has been provided as to when the various activities are fishing under the MSA. It is not appropriate for these regulations to address fishing as it relates to the MMPA.

Comment 21: Three commenters raised concerns about the proposed changes affecting the amount of additional information and the level of analysis required to be submitted with an EFP application. In particular, the level of NEPA analysis was felt to be excessive, potentially requiring an environmental assessment (EA) level of analysis for projects that would likely only require a CE. One commenter supported the development of broad-based analyses under NEPA and ESA that can apply to multiple projects.

Response: The proposed changes were intended to broaden the list of items that need to be considered when reviewing an application, to include items, such as EFH, that have been added to the MSA since the original regulations were published in 1996. The proposed changes were not intended to require EA-level analysis for every proposal prior to application. The agency supports proactive, up-front discussions to alleviate problems during the application and review process. EFP applicants are encouraged to contact the applicable NMFS regional office to discuss the proposed activity prior to submitting an application. Having this initial discussion benefits both parties. The agency becomes aware of the proposed activity and can provide the applicant with information about the relevant regulations and other information pertinent to its application, such as: if the proposed activity is likely

to meet the definition of scientific research activity and be eligible to receive a Letter of Acknowledgment, or if it requires an exemption from a fishery regulation, thus requiring an EFP; and any additional information that is needed for a complete application. This initial discussion also gives the applicant the chance to find out if any other laws may apply (e.g., ESA, MMPA, NEPA, etc.) and what level of NEPA analysis might be required. The agency also supports the combination of groups of associated projects, and their associated applications, analyses, etc., such as the projects funded through the Mid-Atlantic RSA program and the Northeast Cooperative Research Partners Program. The agency has streamlined the process for reviewing applications and combining analyses for these grouped projects. For example, the NEPA analysis for the Mid-Atlantic RSA projects is included as part of the EA for the annual specifications process for the respective FMP(s), thus alleviating the need for each project to do its own analysis. The agency is also open to considering the development of broad-based (umbrella) EFPs for groups of associated projects. This approach is currently being considered for the Cooperative Research Study Fleet in the Northeast region.

Comment 22: Two additional comments also focused on environmental analyses. One recommended that environmental analyses should be completed and made available to the public before the public comment period on an EFP application. The other suggested that collective and cumulative impacts of multiple concurrent EFPs must be evaluated.

Response: The **Federal Register** notice that is published for EFP applications provides a brief description of the proposed activities, and provides contact information for the NMFS staff involved in reviewing such proposals. The public may contact NMFS staff to request a copy of the environmental analyses submitted for the proposed project. Some regions also make their NEPA analyses available through their regional website. NMFS is concerned with the cumulative impacts of multiple concurrent EFP projects. There are NEPA staff located in each NMFS regional office and at NMFS Headquarters. They monitor and track NEPA-related activities under their purview, and perform appropriate analyses, such as cumulative impact analyses, in accordance with national and regional policies and procedures.

Comment 23: Several commenters raised concerns that the proposed rule did not meet Congress' intent in MSA section 318(d) to ''promulgate regulations that create an expedited, uniform, and regionally-based process to promote issuance, where practicable, of experimental fishing permits.'' Some comments asserted that there was little if any streamlining of the process. Other comments focused on a need for flexibility to address issues on a regional basis, while recognizing that the proposed rule did provide remedies to some existing regional problems. Most of the comments related to MSA language raised concerns that the proposed changes would actually make the EFP process more complex and burdensome.

Response: NMFS believes that the proposed rule does meet Congressional intent. Congress did not provide a definition of ''experimental fishing'' in the reauthorized MSA and NMFS regulations at § 600.10 have long interpreted ''experimental fishing'' and ''exempted fishing'' as synonymous. Therefore, the mandate in section 318(d) was viewed as direction to amend the existing regulations. The existing regulations, in conjunction with the revisions made herein, allow for regional flexibility while also maintaining national consistency. The regulations allow the Regional Administrator or Director to make determinations on a case-by-case basis when this is the best solution to address region and fishery specific issues. This meets the congressional mandate to have a ''uniform, and regionally-based process.'' Part of the concern raised about the additional complexity introduced in the proposed rule directly relates to the proposed definition of ''gear testing.'' The removal of the definition of gear testing, and the further clarification of conservation engineering, scientific research activity, scientific research vessel, and exempted fishing, provides additional clarification to address these concerns. Some conservation engineering projects will now be considered scientific research and will qualify for a Letter of Acknowledgment, thus simplifying and streamlining the review and issuance process for these projects. The process for obtaining EFPs is complex due to the need to comply with other applicable laws (e.g., ESA, MMPA, NEPA, etc.). Where the process becomes the most efficient is in the programs, like the Mid-Atlantic RSA and Northeast Cooperative Research Study Fleet, where the analyses can be performed for all the participating projects at the same time. NMFS encourages the Councils to work with the cooperative research community and NMFS to increase the use of these types of programs.

Comment 24: One commenter stated that the Councils were not adequately engaged in the preparation of the proposed rule.

Response: NMFS engaged the Councils as allowed under current authorities. NMFS conducted several conference calls with regional office and Council staff to discuss the draft proposed rule. NMFS also briefed the Council Chairs and Executive Directors on the proposed rule at the March 2008 Council Coordination Committee meeting.

Comment 25: One commenter was concerned that the time limit for EFPs specified in the proposed rule in § 600.745(b)(5) is limiting and unnecessary. The commenter indicated that the duration of the permit can be determined during the review of the proposal and can be handled on a case-by-case basis.

Response: The 1-year limit specified in the proposed rule is in the existing regulations, and was not revised in the proposed rule. The only proposed change to this section was the removal of the phrase ''unless revoked, suspended, or modified.'' The relevant paragraph now reads: ''Unless otherwise specified in the EFP or a superseding notice or regulation, an EFP is valid for no longer than 1 year. EFPs may be renewed following the application procedures in this section.'' Therefore, the Regional Administrator or Director continues to have the discretion to issue an EFP for more than 1 year.

Comment 26: One commenter stated that inclusion of terms and conditions in EFPs should not be discretionary.

Response: Section 600.745(b)(3)(v) allows the Regional Administrator or Director the discretion to attach terms and conditions to an EFP on a case-by-case basis, and does not mandate specific terms and conditions, thus allowing for a regionally-based process.

Comment 27: One commenter raised a concern that § 600.745(b)(3)(ii) could be interpreted to mean that NMFS may not have to consult with the Council(s). The commenter felt strongly that all EFP applications should be reviewed by the Council(s), and wanted to ensure that Council review will not be circumvented by the new regulations.

Response: Section 600.745(b)(3)(i) states, ''The Regional Administrator or Director also will forward copies of the application to the appropriate Council(s), the USCG, and the appropriate fishery management agencies of affected states ...'' This is a mandatory requirement to notify the appropriate Council(s) and other

agencies that an EFP application is under review and provides an opportunity for the Council(s) and agencies to review and provide comment on the application. Further, § 600.745(b)(3)(ii) states, ''If the application is complete and warrants additional consultation, the Regional Administrator or Director may consult with the appropriate Council(s) concerning the permit application during the period in which comments have been requested.'' This sentence was not revised in the proposed rule. Retaining this wording allows the Councils the flexibility to do their review during a Council meeting, and not necessarily during the comment period.

Comment 28: Two commenters raised issue with the language in § 600.745(b)(1) allowing the collection of a fee for issuance of an EFP.

Response: This language is in the existing regulations, and was not revised in the proposed rule. The language does not mandate that a fee will be charged, it simply allows a fee to be charged.

Comment 29: One commenter recommended that the proposed regulations at § 600.745(b)(1) be revised to clarify that EFPs will not be issued to authorize fishing activities that are inconsistent with the requirements of take reduction plans adopted under the MMPA. Another commenter requested that the regulations clarify when ESA consultation will be required.

Response: NMFS emphasizes that this rulemaking concerns regulations of general applicability. In the course of reviewing each EFP application, NMFS conducts the appropriate level of ESA and MMPA consultation, which require a fact-specific inquiry. Concerns about consistency with any relevant take reduction plans would be evaluated at that time.

Comment 30: One commenter raised a concern with the potential increased expense of particular terms and conditions that may be applied to EFPs under the authority of revised § 600.745(b)(3)(v). They point out that requiring observers, vessel monitoring systems, or other electronic devices as a condition of an EFP may add significant costs to a project, and that such costs should be incorporated into the grant or that compensation fishing should be authorized to help cover the additional expense.

Response: This regulation, which is only slightly modified from the existing requirements in § 600.745(b)(3)(v), was written to provide the Regional Administrator or Director with the flexibility to place specific terms and conditions within each EFP authorization on a case-by-case basis. NMFS realizes that these additional terms and conditions may increase the cost of conducting the project. When the Regional Administrator or Director requires additional terms and conditions they have made an informed decision that they are necessary.

Comment 31: One commenter raised concerns about the modification of projects issued EFPs. They recommended that any modifications should be clearly documented, and the public should be notified of any such changes.

Response: It is currently left up to the discretion of the Regional Administrator or Director as to whether any proposed modifications will be authorized, and to what extent a modification requires review and consultation. Minor modifications, such as the replacement of one vessel by another similar vessel, are handled as routine. In such circumstances, the principal investigator submits to NMFS information about the new vessel and any additional information required in the applicable region, such as the owner's or operator's signature agreeing to the conditions of the permit. NMFS then evaluates and documents the replacement based on regional policies, which include consideration of the vessel's history of prior fisheries violations, if any, and, in some regions, issuance of a new EFP listing the new vessel. The new vessel must carry the permit on board while conducting EFP activities. Other minor modifications, such as a slight change to the start and end date of a project, are typically handled by conducting an abbreviated review and possibly a consultation process (time and area changes may require ESA, MMPA and/or Habitat consultation), while significant modifications, such as gear changes, requests to enter an adjacent closed area, or substituting a vessel that is not equivalent to the vessel it replaces, are typically handled as a new application, with full review and consultation, as needed.

Comment 32: One commenter raised multiple concerns regarding the level of involvement that NMFS should have with applicants, the amount of assistance provided in the completion of EFP applications, and whether or not resubmissions of previously denied projects should be considered.

Response: NMFS will provide some level of assistance to EFP applicants, as resources and priorities allow. It is at the agency's discretion to decide how much assistance is appropriate given the nature of the situation. These situations are best handled on a case-by-case basis. All applications for EFPs should be considered, even those that are being resubmitted after being previously denied.

Comment 33: Three commenters raised questions regarding the new regulations added in § 600.745(e) concerning observers. The commenters inquired to whom the regulations applied, and what was meant by ''other programs.''

Response: This section was added to specifically address an agency need regarding its ability to place observers on fishing vessels to collect fish and/or data. It applies specifically to the NMFS observer programs, and to NMFS observers, staff, and contractors conducting activities in accordance with approved NMFS observer program sampling protocols. The reference to ''other programs'' in the preamble of the proposed rule means any other NMFS program besides the NMFS observer program (e.g., the NMFS study fleet program in the Northeast). This section of the regulations is not intended to apply to any other observer programs, such as those associated with any state agency, university, research institution, or industry group. Determining whether another institution requires an EFP shall be based upon the proposed activities and the regulations pertaining to scientific research and exempted fishing.

Changes from Proposed Rule

In § 600.10, the definition of ''Compensation fishing'' is revised to clarify when an EFP is required.

In § 600.10, the definition of ''Conservation engineering'' is revised to further describe the types and nature of the activities included, that the assessment of novel uses of existing devices is acceptable, and to clarify when this activity is, and is not, fishing, i.e., when an EFP or a Letter of Acknowledgment is appropriate.

In § 600.10, the definition of ''Gear testing'' is removed.

In § 600.10, the definition of ''Scientific research activity'' is revised. The phrase ''collateral fishing effects'' has been changed to read ''collateral effects of fishing.'' In addition, the description of when gear testing may or may not be considered scientific research is removed. In the proposed rule the phrase ''unless it meets the definition of conservation engineering'' was added following the phrase ''or the testing of fishing gear.'' Since conservation engineering was also added to the list of scientific research activity topics, this phrase is redundant and has been removed.

In § 600.10, the definition of ''Scientific research vessel'' is revised to clarify that a commercial fishing vessel can be utilized as a scientific research vessel.

In addition, the definitions for compensation fishing, conservation engineering, and scientific research activity in § 600.10 have been streamlined by moving text into the operative regulatory sections. For example, the regulatory language that relates to foreign fishing has been deleted from the definitions and placed in § 600.512(a) for scientific research, and the regulatory language that applies to domestic fishing has been deleted from the definitions and placed in § 600.745(a) for scientific research and § 600.745(b)(1) for exempted fishing.

In §§ 600.512(a) and 600.745(a), the factors that the Regional Administrator or Director should consider when making the determination of whether an activity constitutes scientific research or fishing have been outlined.

In §§ 600.512(a) and 600.745(a), text is added to instruct the Regional Administrator or Director to include text in the Letter of Acknowledgment informing the applicant that the proposed research activity may require a permit or consultation under other applicable laws. The proposed rule had instructed the Regional Administrator or Director not to issue the LOA until these other permits had been obtained. The new approach responds to the proposal as it pertains to fishing under the MSA while informing the applicant of potential issues under other applicable laws. In the same sections, the word ''cruise'' is replaced with the word ''activity.''

In addition, in §§ 600.512(a) and 600.745(a), language has been added to recommend that a copy of the Letter of Acknowledgment accompany any fish, or parts thereof, during any ex-vessel activities, such as transporting the fish or fish parts from the vessel to a laboratory. In §§ 600.745(b)(7) and 600.745(d)(7), language has been added to require that a copy of the EFP or exempted educational activities authorization accompany any fish, or parts thereof, during such activities.

In § 600.745(b)(3)(i), the text that was inserted to exempt research projects funded by quota set-asides from the requirement to publish a separate notice in the **Federal Register** is removed. This alleviates the concerns that were raised about the council review and public comment process for EFP proposals for these types of projects.

In the new § 600.745(b)(4), the requirement to sign the permit is retained, but the requirement to return a copy of the signed permit is removed. This requirement did not address a current problem, nor did it meet the intent of MSA section 318(d) to expedite the process.

In § 600.745(c)(1), ''and the appropriate Regional Administrator or Director'' is added so that the NMFS Science Center (fisheries scientists) and the NMFS Regional Office or Office of Sustainable Fisheries (fisheries managers) may receive a copy of a report derived from the research activity.

In § 600.745(c)(2), the requirement to submit a report is revised to set 6 months as the deadline for submission.

In § 600.745(e), the phrase NMFS-approved observer protocols is revised to read ''NMFS-approved sea sampling and/or observer protocols.''

The Paperwork Reduction Act public reporting burden-hour estimates have been revised based on updated estimates from the NMFS regional offices.

Classification

The NMFS Assistant Administrator has determined that this rule is consistent with the provisions of sections 318(d), 402(e), and 305(d) of the MSA, other provisions of the MSA, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities.

This rule provides clarifications of current regulations and information requirements, as well as other administrative requirements regarding scientific research, exempted fishing, and exempted educational activities. The rule serves only to define terms, clarify distinctions among scientific research activity, exempted fishing, and exempted educational activities, and standardize procedures for applying for and issuing EFPs and authorizations for exempted educational activities as allowed under EFPs.

As a result, a final regulatory flexibility analysis is not required and none has been prepared.

This rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA), which has been approved by OMB under Control Number 0648–0309. The public reporting burden for this collection of information is estimated: (1) To average 113 hours per response to send NMFS a copy of a scientific research plan and to average 3 hours per response to provide a copy of the cruise report or research publication; (2) to average 95 hours per response to complete an application for an EFP and to average 3 hours per response or authorization for an exempted educational activity; and (3) to average 47 hours per response to provide a report at the conclusion of exempted fishing and to average 2 hours per response to provide a report at the conclusion of exempted educational activities, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to the Office of Sustainable Fisheries at the **ADDRESSES** above, and email to *David__Rostker@omb.eop.gov*, or fax to (202) 395–7285. Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 600

Fisheries, Fishing.

Dated: August 19, 2009.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons stated in the preamble, NMFS amends 50 CFR part 600 as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

■ 1. The authority citation for part 600 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

■ 2. In § 600.10, definitions for ''Exempted educational activity'', ''Exempted or experimental fishing'', ''Region'', ''Regional Administrator'', ''Science and Research Director'', ''Scientific research activity'', and ''Scientific research vessel'' are revised, and definitions for ''Compensation fishing'' and ''Conservation engineering'' are added, in alphabetical order, to read as follows:

§ 600.10 Definitions.

* * * * *

Compensation fishing means fishing conducted for the purpose of recovering costs associated with resource surveys and scientific studies that support the

management of a fishery, or to provide incentive for participation in such studies. Compensation fishing may include fishing during or subsequent to such surveys or studies.

* * * * *

Conservation engineering means the development and assessment of fishing technologies and fishing techniques designed to conserve target and non-target species, and may include the study of fish behavior and the development and testing of new gear technologies and fishing techniques to minimize bycatch and any adverse effects on essential fish habitat and promote efficient harvest of target species. Conservation engineering may include the assessment of existing fishing technologies applied in novel ways. An example would be assessing the ability of a bycatch reduction device (BRD), designed and proven in one fishery, to reduce bycatch in another fishery. Conservation engineering meeting the definition of scientific research activity is not fishing.

* * * * *

Exempted educational activity means an activity that would otherwise be considered fishing, conducted by an educational institution accredited by a recognized national or international accreditation body, of limited scope and duration, that is otherwise prohibited by this chapter VI, but that is authorized by the appropriate Regional Administrator or Director for educational purposes, i.e., the instruction of an individual or group, and authorized capture of only the amount of fish necessary to demonstrate the lesson.

Exempted or experimental fishing means fishing from a vessel of the United States that involves activities otherwise prohibited by this chapter VI, but that are authorized under an exempted fishing permit (EFP). The regulations in § 600.745 refer exclusively to exempted fishing. References elsewhere in this chapter to experimental fishing mean exempted fishing under this part.

* * * * *

Region means one of six NMFS Regional Offices responsible for administering the management and development of marine resources in the United States in their respective geographical areas of responsibility.

Regional Administrator means the Administrator of one of the six NMFS Regions.

* * * * *

Science and Research Director means the Director of one of the six NMFS Fisheries Science Centers described in Table 1 of § 600.502, or a designee, also known as a Center Director.

* * * * *

Scientific research activity is, for the purposes of this part, an activity in furtherance of a scientific fishery investigation or study that would meet the definition of fishing under the Magnuson-Stevens Act, but for the exemption applicable to scientific research activity conducted from a scientific research vessel. Scientific research activity includes, but is not limited to, sampling, collecting, observing, or surveying the fish or fishery resources within the EEZ, at sea, on board scientific research vessels, to increase scientific knowledge of the fishery resources or their environment, and to test a hypothesis as part of a planned, directed investigation or study conducted according to methodologies generally accepted as appropriate for scientific research. At-sea scientific fishery investigations address one or more topics involving taxonomy, biology, physiology, behavior, disease, aging, growth, mortality, migration, recruitment, distribution, abundance, ecology, stock structure, bycatch or other collateral effects of fishing, conservation engineering, and catch estimation of fish species considered to be a component of the fishery resources within the EEZ. Scientific research activity does not include the collection and retention of fish outside the scope of the applicable research plan, or the testing of fishing gear. Data collection designed to capture and land quantities of fish for product development, market research, and/or public display are not scientific research activities. For foreign vessels, such data collection activities are considered scientific research if they are carried out in full cooperation with the United States.

* * * * *

Scientific research vessel means a vessel owned or chartered by, and controlled by, a foreign government agency, U.S. Government agency (including NOAA or institutions designated as federally funded research and development centers), U.S. state or territorial agency, university (or other educational institution accredited by a recognized national or international accreditation body), international treaty organization, or scientific institution. In order for a domestic commercial fishing vessel to meet this definition, it must be under the control of a qualifying agency or institution, and operate in accordance with a scientific research plan, for the duration of the scientific research activity. In order for a vessel that is owned or chartered and controlled by a foreign government to meet this definition, the vessel must have scientific research as its exclusive mission during the scientific activity in question, and the vessel operations must be conducted in accordance with a scientific research plan.

* * * * *

■ 3. In § 600.512, paragraph (a) is revised to read as follows:

§ 600.512 Scientific research.

(a) *Scientific research activity.* Persons planning to conduct scientific research activities on board a scientific research vessel in the EEZ that may be confused with fishing are encouraged to submit to the appropriate Regional Administrator or Director, 60 days or as soon as practicable prior to its start, a scientific research plan for each scientific activity. The Regional Administrator or Director will acknowledge notification of scientific research activity by issuing to the operator or master of that vessel, or to the sponsoring institution, a Letter of Acknowledgment. This Letter of Acknowledgment is separate and distinct from any permit or consultation required under the MMPA, the ESA, or any other applicable law. The Regional Administrator or Director will include text in the Letter of Acknowledgment informing the applicant that such permits may be required and should be obtained from the agency prior to embarking on the activity. If the Regional Administrator or Director, after review of a research plan, determines that it does not constitute scientific research activity but rather fishing, the Regional Administrator or Director will inform the applicant as soon as practicable and in writing. In making this determination, the Regional Administrator, Director, or designee shall consider: the merits of the individual proposal and the institution(s) involved; whether the proposed activity meets the definition of scientific research activity; and whether the vessel meets all the requirements for a scientific research vessel. Foreign vessels that qualify as scientific research vessels and which are engaged in a scientific research activity may only engage in compensation fishing during the scientific research cruise and in accordance with the applicable scientific research plan. The Regional Administrator or Director may also make recommendations to revise the research plan to ensure the activity will be considered to be a scientific research activity. The Regional Administrator or Director may designate a Science and Research Director, or the Assistant

Regional Administrator for Sustainable Fisheries, to receive scientific research plans and issue Letters of Acknowledgment. In order to facilitate identification of the activity as scientific research, persons conducting scientific research activities are advised to carry a copy of the scientific research plan and the Letter of Acknowledgment on board the scientific research vessel and to make it available for inspection upon the request of any authorized officer. It is recommended that for any scientific research activity, any fish, or parts thereof, retained pursuant to such activity be accompanied, during any ex-vessel activities, by a copy of the Letter of Acknowledgment. Activities conducted in accordance with a scientific research plan acknowledged by such a Letter of Acknowledgment are presumed to be scientific research activities. An authorized officer may overcome this presumption by showing that an activity does not fit the definition of scientific research activity or is outside the scope of the scientific research plan.

* * * * *

■ 4. In § 600.745:

A. Redesignate paragraphs (b)(3)(v)(C) through (H) as paragraphs (b)(3)(v)(D) through (I), respectively.

B. Redesignate paragraphs (b)(4) through (8) as paragraphs (b)(5) through (9), respectively.

C. Redesignate paragraphs (d)(3)(ii)(B) through (F) as paragraphs (d)(3)(ii)(C) through (G), respectively.

D. Add paragraphs (b)(3)(v)(C), (b)(4), (d)(3)(ii)(B), and (e).

E. Revise paragraphs (a), (b)(1), (b)(2)(v), (b)(3)(i) introductory text, (b)(3)(i)(C), (b)(3)(ii), (b)(3)(iii) introductory text, (b)(3)(iii)(B), (b)(3)(iii)(C), (b)(3)(v) introductory text, (b)(3)(v)(F), (b)(3)(v)(G), (b)(5), (b)(7), (c), (d)(1), (d)(2)(vii), (d)(3)(ii) introductory text, (d)(3)(ii)(E), (d)(3)(iii), and (d)(7).

The revisions and additions read as follows:

§ 600.745 Scientific research activity, exempted fishing, and exempted educational activity.

(a) *Scientific research activity.* Nothing in this part is intended to inhibit or prevent any scientific research activity conducted by a scientific research vessel. Persons planning to conduct scientific research activities on board a scientific research vessel in the EEZ are encouraged to submit to the appropriate Regional Administrator or Director, 60 days or as soon as practicable prior to its start, a scientific research plan for each scientific activity. The Regional Administrator or Director will acknowledge notification of scientific research activity by issuing to the operator or master of that vessel, or to the sponsoring institution, a Letter of Acknowledgment. This Letter of Acknowledgment is separate and distinct from any permit or consultation required by the MMPA, the ESA, or any other applicable law. The Regional Administrator or Director will include text in the Letter of Acknowledgment informing the applicant that such a permit may be required and should be obtained from the agency prior to embarking on the activity. If the Regional Administrator or Director, after review of a research plan, determines that it does not constitute scientific research but rather fishing, the Regional Administrator or Director will inform the applicant as soon as practicable and in writing. In making this determination, the Regional Administrator, Director, or designee shall consider: the merits of the individual proposal and the institution(s) involved; whether the proposed activity meets the definition of scientific research activity; and whether the vessel meets all the requirements for a scientific research vessel. The Regional Administrator or Director may also make recommendations to revise the research plan to ensure the activity will be considered to be scientific research activity or recommend the applicant request an EFP. The Regional Administrator or Director may designate a Science and Research Director, or the Assistant Regional Administrator for Sustainable Fisheries, to receive scientific research plans and issue Letters of Acknowledgment. In order to facilitate identification of the activity as scientific research, persons conducting scientific research activities are advised to carry a copy of the scientific research plan and the Letter of Acknowledgment on board the scientific research vessel and to make it available for inspection upon the request of any authorized officer. It is recommended that for any scientific research activity, any fish, or parts thereof, retained pursuant to such activity be accompanied, during any ex-vessel activities, by a copy of the Letter of Acknowledgment. Activity conducted in accordance with a scientific research plan acknowledged by such a Letter of Acknowledgment is presumed to be scientific research activity. An authorized officer may overcome this presumption by showing that an activity does not fit the definition of scientific research activity or is outside the scope of the scientific research plan.

(b) * * *

(1) *General.* A NMFS Regional Administrator or Director may authorize, for limited testing, public display, data collection, exploratory fishing, compensation fishing, conservation engineering, health and safety surveys, environmental cleanup, and/or hazard removal purposes, the target or incidental harvest of species managed under an FMP or fishery regulations that would otherwise be prohibited. Exempted fishing may not be conducted unless authorized by an EFP issued by a Regional Administrator or Director in accordance with the criteria and procedures specified in this section. Compensation fishing must be conducted under an EFP if the activity would otherwise be prohibited by applicable regulations unless the activity is specifically authorized under an FMP or a scientific research permit. Conservation engineering that does not meet the definition of scientific research activity, but does meet the definition of fishing must be conducted under an EFP if the activity would otherwise be prohibited by applicable regulations. Data collection designed to capture and land quantities of fish for product development, market research, and/or public display must be permitted under exempted fishing procedures. An EFP exempts a vessel only from those regulations specified in the EFP. All other applicable regulations remain in effect. The Regional Administrator or Director may charge a fee to recover the administrative expenses of issuing an EFP. The amount of the fee will be calculated, at least annually, in accordance with procedures of the NOAA Handbook for determining administrative costs of each special product or service; the fee may not exceed such costs. Persons may contact the appropriate Regional Administrator or Director to determine the applicable fee.

(2) * * *

(v) The species (target and incidental) expected to be harvested under the EFP, the amount(s) of such harvest necessary to conduct the exempted fishing, the arrangements for disposition of all regulated species harvested under the EFP, and any anticipated impacts on the environment, including impacts on fisheries, marine mammals, threatened or endangered species, and EFH.

* * * * *

(3) * * *

(i) The Regional Administrator or Director, as appropriate, will review each application and will make a preliminary determination whether the application contains all of the required information and constitutes an activity appropriate for further consideration. If the Regional Administrator or Director finds that any application does not

warrant further consideration, both the applicant and the affected Council(s) will be notified in writing of the reasons for the decision. If the Regional Administrator or Director determines that any application warrants further consideration, notification of receipt of the application will be published in the **Federal Register** with a brief description of the proposal. Interested persons will be given a 15- to 45-day opportunity to comment on the notice of receipt of the EFP application. In addition, comments may be requested during public testimony at a Council meeting. If the Council intends to take comments on EFP applications at a Council meeting, it must include a statement to this effect in the Council meeting notice and meeting agenda. Multiple applications for EFPs may be published in the same **Federal Register** document and may be discussed under a single Council agenda item. The notification may establish a cut-off date for receipt of additional applications to participate in the same, or a similar, exempted fishing activity. The Regional Administrator or Director will also forward copies of the application to the Council(s), the U.S. Coast Guard, and the appropriate fishery management agencies of affected states, accompanied by the following information:

* * * * *

(C) Biological information relevant to the proposal, including appropriate statements of environmental impacts, including impacts on fisheries, marine mammals, threatened or endangered species, and EFH.

(ii) If the application is complete and warrants additional consultation, the Regional Administrator or Director may consult with the appropriate Council(s) concerning the permit application during the period in which comments have been requested. The Council(s) or the Regional Administrator or Director shall notify the applicant in advance of any public meeting at which the application will be considered, and offer the applicant the opportunity to appear in support of the application.

(iii) As soon as practicable after receiving a complete application, including all required analyses and consultations (e.g., NEPA, EFH, ESA and MMPA), and having received responses from the public, the agencies identified in paragraph (b)(3)(i) of this section, and/or after the consultation, if any, described in paragraph (b)(3)(ii) of this section, the Regional Administrator or Director shall issue the EFP or notify the applicant in writing of the decision to deny the EFP and the reasons for the denial. Grounds for denial of an EFP include, but are not limited to, the following:

* * * * *

(B) According to the best scientific information available, the harvest to be conducted under the permit would detrimentally affect the well-being of the stock of any regulated species of fish, marine mammal, threatened or endangered species, or EFH; or

(C) Issuance of the EFP would have economic allocation as its sole purpose (other than compensation fishing); or

* * * * *

(v) The Regional Administrator or Director should attach, as applicable, terms and conditions to the EFP, consistent with the purpose of the exempted fishing and as otherwise necessary for the conservation and management of the fishery resources and the marine environment, including, but not limited to:

* * * * *

(C) A citation of the regulations from which the vessel is exempted.

* * * * *

(F) Whether observers, a vessel monitoring system, or other electronic equipment must be carried on board vessels operating under the EFP, and any necessary conditions, such as predeployment notification requirements.

(G) Data reporting requirements necessary to document the activities, including catches and incidental catches, and to determine compliance with the terms and conditions of the EFP and established time frames and formats for submission of the data to NMFS.

* * * * *

(4) *Acknowledging permit conditions.* Upon receipt of an EFP, the permit holder must date and sign the permit, and retain the permit on board the vessel(s). The permit is not valid until signed by the permit holder. In signing the permit, the permit holder:

(i) Agrees to abide by all terms and conditions set forth in the permit, and all restrictions and relevant regulations; and

(ii) Acknowledges that the authority to conduct certain activities specified in the permit is conditional and subject to authorization and revocation by the Regional Administrator or Director.

(5) *Duration.* Unless otherwise specified in the EFP or a superseding notice or regulation, an EFP is valid for no longer than 1 year. EFPs may be renewed following the application procedures in this section.

* * * * *

(7) *Inspection.* Any EFP issued under this section must be carried on board the vessel(s) for which it was issued. The EFP must be presented for inspection upon request of any authorized officer. Any fish, or parts thereof, retained pursuant to an EFP issued under this paragraph must be accompanied, during any ex-vessel activities, by a copy of the EFP.

* * * * *

(c) *Reports.* (1) NMFS requests that persons conducting scientific research activities from scientific research vessels submit a copy of any report or other publication created as a result of the activity, including the amount, composition, and disposition of their catch, to the appropriate Science and Research Director and Regional Administrator or Director.

(2) Upon completion of the activities of the EFP, or periodically as required by the terms and conditions of the EFP, persons fishing under an EFP must submit a report of their catches and any other information required, to the appropriate Regional Administrator or Director, in the manner and within the time frame specified in the EFP, but no later than 6 months after concluding the exempted fishing activity. Persons conducting EFP activities are also requested to submit a copy of any publication prepared as a result of the EFP activity.

(d) * * *

(1) *General.* A NMFS Regional Administrator or Director may authorize, for educational purposes, the target or incidental harvest of species managed under an FMP or fishery regulations that would otherwise be prohibited. The trade, barter or sale of fish taken under this authorization is prohibited. The decision of a Regional Administrator or Director to grant or deny an exempted educational activity authorization is the final action of NMFS. Exempted educational activities may not be conducted unless authorized in writing by a Regional Administrator or Director in accordance with the criteria and procedures specified in this section. Such authorization will be issued without charge.

(2) * * *

(vii) The species and amounts expected to be caught during the exempted educational activity, and any anticipated impacts on the environment, including impacts on fisheries, marine mammals, threatened or endangered species, and EFH.

* * * * *

(3) * * *

(ii) The Regional Administrator or Director should attach, as applicable, terms and conditions to the authorization, consistent with the

purpose of the exempted educational activity and as otherwise necessary for the conservation and management of the fishery resources and the marine environment, including, but not limited to:

* * * * *

(B) A citation of the regulations from which the vessel is being exempted.

* * * * *

(E) Data reporting requirements necessary to document the activities and to determine compliance with the terms and conditions of the exempted educational activity.

* * * * *

(iii) The authorization will specify the scope of the authorized activity and will include, at a minimum, the duration, vessel(s), persons, species, and gear involved in the activity, as well as any additional terms and conditions specified under paragraph (d)(3)(ii) of this section.

* * * * *

(7) *Inspection.* Any authorization issued under this paragraph (d) must be carried on board the vessel(s) for which it was issued, or be in the possession of at least one of the persons identified in the authorization, who must be present while the exempted educational activity is being conducted. The authorization must be presented for inspection upon request of any authorized officer. Activities that meet the definition of ''fishing,'' despite an educational purpose, are fishing. An authorization may allow covered fishing activities; however, fishing activities conducted outside the scope of an authorization for exempted educational activities are illegal. Any fish, or parts thereof, retained pursuant to an authorization issued under this paragraph must be accompanied, during any ex-vessel activities, by a copy of the authorization.

(e) *Observers.* NMFS-sanctioned observers or biological technicians conducting activities within NMFS-approved sea sampling and/or observer protocols are exempt from the requirement to obtain an EFP. For purposes of this section, NMFS-sanctioned observers or biological technicians include NMFS employees, NMFS observers, observers who are employees of NMFS-contracted observer providers, and observers who are employees of NMFS-permitted observer providers.

[FR Doc. E9–20489 Filed 8–24–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 090324366–9371–01]

RIN 0648–XQ50

Fisheries Off West Coast States; Modifications of the West Coast Commercial and Recreational Salmon Fisheries; Inseason Actions #1, #2, and #3

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of fishing seasons, gear restrictions, and landing and possession limits; request for comments.

SUMMARY: NOAA Fisheries announces three inseason actions in the ocean salmon fisheries. Inseason action #1 modified the commercial fishery in the area from Cape Falcon, Oregon to Humbug Mountain, Oregon, and from Humbug Mountain, Oregon to the Oregon/California Border. Inseason action #2 modified the recreational fishery in the area from Cape Falcon, Oregon to Humbug Mountain, Oregon. Inseason action #3 modified the commercial fishery in the area from U.S./Canada Border to Cape Falcon, Oregon.

DATES: Inseason actions #1 and #2 were effective on March 15, 2009, until replaced by the 2009 management measures, May 1, 2009. Inseason action #3 was effective on July 18, 2009 and remains in effect until the closing date or attainment of the subarea quotas, whichever was first, as announced in the 2009 annual management measures or through additional inseason action. Comments will be accepted through September 9, 2009.

ADDRESSES: You may submit comments, identified by 0648–XQ50, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*
- Fax: 206–526–6736, Attn: Peggy Busby
- Mail: 7600 Sand Point Way NE, Building 1, Seattle, WA, 98115

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Peggy Busby, by phone at 206–526–4323.

SUPPLEMENTARY INFORMATION: In the 2008 annual management measures for ocean salmon fisheries (73 FR 23971, May 1, 2008), NMFS announced the commercial and recreational fisheries in the area from the U.S./Canada Border to the U.S./Mexico Border.

On March 10, 2009, the Regional Administrator (RA) consulted with representatives of the Pacific Fishery Management Council (Council), Washington Department of Fish and Wildlife, Oregon Department of Fish and Wildlife, and California Department of Fish and Game. Information related to catch to date, Chinook and coho catch rates, and possible impacts to Sacramento Fall Chinook were discussed. These inseason actions were taken because these fisheries were to occur in the impact area for Sacramento Fall Chinook. Preliminary projections suggested this stock was at risk of not meeting its escapement goal in 2009 and therefore consistent with the Magnuson-Stevens Act, all fisheries that impact the stock were potentially to remain closed until the 2009 management measures became effective on May 1, 2009. By moving the opening dates of these fisheries NMFS and the Council would have more time to evaluate the impacts of these fisheries on the Sacramento River fall Chinook stock.

As a result, on March 10, 2009, the states recommended, and the RA concurred that inseason actions #1 and #2 would cancel the previously scheduled March 15, 2009, fishery opening date for the (a) commercial fishery in the area from Cape Falcon, Oregon to Humbug Mountain, Oregon, and from Humbug Mountain, Oregon to the Oregon/California Border and (b) the recreational fishery in the area from Cape Falcon, Oregon, to Humbug Mountain, Oregon. Modification in quota and/or fishing seasons is authorized by regulations at 50 CFR 660.409(b)(1)(I).

In the 2009 annual management measures for ocean salmon fisheries (74 FR 20610, May 5, 2009), NMFS announced the commercial and

recreational fisheries in the area from the U.S./Canada Border to the U.S./Mexico Border, beginning May 1, 2009.

The Regional Administrator (RA) consulted with representatives of the Pacific Fishery Management Council, Washington Department of Fish and Wildlife and Oregon Department of Fish and Wildlife on July 16, 2009. The information considered related to catch to date and Chinook and coho catch rates compared to quotas and other management measures established preseason.

Inseason action #3 increased the commercial landing and possession limit for Chinook salmon in the area from the U.S./Canada Border to Cape Falcon, Oregon, from 40 to 75 Chinook salmon per vessel for each open period. This action was taken to provide greater access to Chinook salmon that were available for harvest within the guideline established preseason. On July 16, 2009, the states recommended this action and the RA concurred; inseason action #3 took effect on July 18, 2009, until it is modified by any subsequent inseason actions. Modification in quota and/or fishing seasons is authorized by regulations at 50 CFR 660.409(b)(1)(i). All other restrictions and regulations remain in effect as announced for the 2009 Ocean Salmon Fisheries and previous inseason actions.

The RA determined that the best available information indicated that the catch and effort data, and projections, supported the above inseason actions recommended by the states. The states manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone in accordance with these Federal actions. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice of the described regulatory actions was given, prior to the date the action was effective, by telephone hotline number 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz. These actions do not apply to other fisheries that may be operating in other areas.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B) because such notification would be impracticable. As previously noted, actual notice of the regulatory actions was provided to fishers through telephone hotline and radio notification. These actions comply with the requirements of the annual management measures for ocean salmon fisheries (73 FR 23971, May 1, 2008; 74 FR 20610, May 5, 2009), the West Coast Salmon Plan, and regulations implementing the West Coast Salmon Plan 50 CFR 660.409 and 660.411. Prior notice and opportunity for public comment was impracticable because NMFS and the state agencies had insufficient time to provide for prior notice and the opportunity for public comment between the time the fishery catch and effort data were collected to determine the extent of the fisheries, and the time the fishery modifications had to be implemented in order to allow fishers access to the available fish at the time the fish were available. The AA also finds good cause to waive the 30–day delay in effectiveness required under U.S.C. 553(d)(3), as a delay in effectiveness of these actions would allow fishing at levels inconsistent with the goals of the Salmon Fishery Management Plan and the current management measures.

These actions are authorized by 50 CFR 660.409 and 660.411 and are exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 18, 2009.

Kristen C. Koch,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9–20490 Filed 8–24–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910091344–9056–02]

RIN 0648–XR04

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Non-American Fisheries Act Crab Vessels Catching Pacific Cod for Processing by the Inshore Component in the Central Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by non-American Fisheries Act (AFA) crab vessels that are subject to sideboard limits catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2009 Pacific cod sideboard limit established for non-AFA crab vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 1, 2009, through 2400 hrs, A.l.t., December 31, 2009.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679. Regulations governing sideboard protections for GOA groundfish fisheries appear at subpart B of 50 CFR part 680.

The 2009 Pacific cod sideboard limit established for non-AFA crab vessels that are subject to sideboard limits catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA is 815 metric tons (mt) for the GOA, as established by the final 2009 and 2010 harvest specifications for groundfish of the GOA (74 FR 7333, February 17, 2009).

In accordance with § 680.22(e)(2)(i), the Regional Administrator has determined that the 2009 Pacific cod sideboard limit established for non-AFA crab vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a sideboard directed fishing allowance of 805 mt, and is setting aside the remaining 10 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 680.22(e)(3), the Regional Administrator finds that this sideboard directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by non-AFA crab vessels that are subject to sideboard limits catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the sideboard directed fishing closure of Pacific cod for non-AFA crab vessels that are subject to sideboard limits catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 17, 2009.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 680.22 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 19, 2009.

Kristen C. Koch,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9–20422 Filed 8–24–09; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 74, No. 163
Tuesday, August 25, 2009

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

7 CFR Part 1580

RIN 0551–AA80

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Proposed rule.

SUMMARY: The American Recovery and Reinvestment Act of 2009 reauthorizes and modifies the Trade Adjustment Assistance for Farmers program as established by Subtitle C of Title I of the Trade Act of 2002, which amended the Trade Act of 1974. Under this program, the U.S. Department of Agriculture (USDA) provides technical assistance and cash benefits to eligible producers of raw agricultural commodities and fishermen (jointly referred to as ''producers'') when the Foreign Agricultural Service (FAS) Administrator determines that increased imports of raw agricultural commodities, aquaculture products, or wild-caught aquatic species (jointly referred to as ''agricultural commodities'') have contributed importantly to a greater than 15 percent decrease in the national average price, or quantity of production, or value of production, or cash receipts for the agricultural commodity specified in the certified petition compared to the average of the three preceding marketing years. The rule establishes the procedure by which a group can submit a petition for certification of eligibility and individual producers of agricultural commodities can apply for technical assistance and cash benefits for the development and implementation of approved business adjustment plans.

DATES: Comments should be received on or before September 24, 2009, to be assured consideration.

ADDRESSES: Comments should be mailed or delivered to The Trade Adjustment Assistance for Farmers Staff, Import Policies and Export Reporting Division, Office of Trade Programs, Foreign Agricultural Service, 1400 Independence Avenue, SW., STOP 1021, Washington, DC 20250–1021. Comments can also be e-mailed to *tradeadjustment@fas.usda.gov.* Comments received may be inspected between 10 a.m. and 4 p.m. in Suite 100, 1250 Maryland Avenue, SW., Washington, DC 20034.

FOR FURTHER INFORMATION CONTACT: The Trade Adjustment Assistance for Farmers Staff, Import Policies and Export Reporting Division, Office of Trade Programs, Foreign Agricultural Service, 1400 Independence Avenue, SW., STOP 1021; e-mail: *tradeadjustment@fas.usda.gov;* telephone: (202) 720–0638; fax (202) 720–8461. Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact the USDA Office of Communications at (202) 720–5881 (voice) or (202) 720–7808 (TDD).

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) designated this rule as significant under Executive Order 12866 and, therefore, it has been reviewed by OMB. A cost-benefit assessment for the proposed rule has been prepared and is available from the information contact cited above.

Regulatory Flexibility Act

The Regulatory Flexibility Act ensures that regulatory and information requirements are tailored to the size and nature of small businesses, small organizations, and small governmental jurisdictions. This rule will not have a significant economic impact on a substantial number of small farm operations. Participation in the program is voluntary. Direct and indirect costs are likely to be very small as a percentage of revenue and in terms of absolute costs. The minimal regulatory requirements impact large and small businesses equally, and the program's benefits should improve cash flow and liquidity for farmers participating in the program.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995; FAS has previously received approval from the OMB with respect to the information collection required to support this program. The information collection is described below:

Title: Trade Adjustment Assistance for Farmers.

OMB Control Number: 0551–0040.

Executive Order 12988

This rule has been reviewed under Executive Order 12988. The provisions of this rule would not have preemptive effect with respect to any State or local laws, regulations, or policies which conflict with such provision or which otherwise impede their full implementation. The rule would not have retroactive effect. Before any judicial action may be brought regarding this rule, all administrative remedies must be exhausted.

National Environmental Policy Act

The Administrator (FAS) has determined that this action will not have a significant effect on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is necessary for this rule.

Executive Orders 12372, 13083 and 13084, and the Unfunded Mandates Reform Act (Pub. L. 104–4)

These Executive Orders and Public Law 104–4 require consultation with State and local officials and Indian tribal governments. This rule does not impose an unfunded mandate or any other requirement on State, local or tribal governments. Accordingly, these programs are not subject to the provisions of Executive Order 12372, Executive Order 13083, and Executive Order 13084, or the Unfunded Mandates Reform Act.

Executive Order 12630

This Order requires careful evaluation of governmental actions that interfere with constitutionally protected property rights. This rule would not interfere with any property rights and, therefore, does not need to be evaluated on the basis of the criteria outlined in Executive Order 12630.

Background

The American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) reauthorizes and modifies the Trade Adjustment Assistance (TAA) for Farmers program and provides both technical assistance and cash benefits to producers as established by Subtitle C of Title I of the Trade Act of 2002 (Pub. L. 107–210), which amended the Trade Act of 1974. The statute authorizes an appropriation of not more than $90 million per year for the 2009 and 2010 fiscal years, and $22.5 million for the period beginning October 1, 2010 and ending December 31, 2010 to carry out the program; including USDA salaries and expenses.

Under this rule, a group of producers may petition the Administrator (FAS) for trade adjustment assistance during the petition period announced in the **Federal Register**. Petitioners must submit data on either the national average price, or quantity of production, or value of production, or cash receipts for the agricultural commodity for the most recent marketing year for which data are available and the three preceding marketing years. FAS will first review the petition for appropriateness, completeness, and timeliness, before publishing a notice in the **Federal Register** that it has been accepted. The Economic Research Service (ERS) will then conduct a market study to verify the decline in the national average price, or quantity of production, or value of production, or cash receipts for the petitioned commodity, and to assess possible causes, taking into due account any special factors which may have affected prices, including imports, exports, production, changes in consumer preferences, weather conditions, diseases, and other relevant issues. ERS will report its findings to the Administrator (FAS) who will review and determine whether or not to certify the petitioning group's eligibility for trade adjustment assistance.

Upon certification of the petition, producers have 90 days to contact the Farm Service Agency (FSA) to apply for assistance. As soon as producers are found eligible, they may receive: (1) training specifically tailored to their needs by the Cooperative State Research, Education, and Extension Service (CSREES); and under certain circumstances (2) travel and per diem payments to help offset costs incurred to attend initial training. Depending on the commodity and the region, the training package may include technical publications in print or on-line, group seminars and presentations, one-on-one meetings, and assistance in the development of business adjustment plans. Producers who satisfy personal and farm income limits; complete the designated technical training; and develop and implement approved business plans are eligible for TAA for Farmers cash benefits. During the 36-month period following certification of the petition by the Administrator (FAS), a producer may receive not more than $12,000 for the development and implementation of business plans approved under the TAA for Farmers program. If the funding authorized by Congress is insufficient to pay 100 percent of all TAA for Farmers obligations during the fiscal year, the payments provided for business plan development and implementation will be reduced proportionately, as determined by the Administrator (FAS).

List of Subjects in 7 CFR Part 1580

Agricultural commodity imports, Reporting and recordkeeping requirements, and Trade adjustment assistance.

For the reasons set out in the preamble, 7 CFR part 1580 is proposed to be revised to read as follows:

PART 1580—TRADE ADJUSTMENT ASSISTANCE FOR FARMERS

Sec.

1580.101 General statement.
1580.102 Definitions.
1580.201 Petitions for trade adjustment assistance.
1580.202 Hearings, petition reviews, and amendments.
1580.203 Determination of eligibility and certification by the Administrator (FAS).
1580.301 Application for trade adjustment assistance.
1580.302 Technical assistance and services.
1580.303 Adjustment assistance payments.
1580.401 Subsequent year recertification.
1580.501 Administration.
1580.502 Maintenance of records, audits and compliance.
1580.503 Recovery of overpayments.
1580.504 Debarment and suspension and penalties.
1580.505 Appeals.
1580.506 Judicial Review.
1580.602 Paperwork Reduction Act assigned number.

Authority: 19 U.S.C. 2401.

§ 1580.101 General statement.

This part provides regulations for the Trade Adjustment Assistance (TAA) for Farmers program as authorized by the Trade Act of 1974, amended by Subtitle C of Title I of the Trade Act of 2002 (Pub. L. 107–210), and re-authorized and modified by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5). The regulations establish procedures by which a group of producers of raw agricultural commodities or fishermen (jointly referred to as ''producers'') can petition for certification of eligibility and through which individual producers covered by a certified petition can apply for technical assistance and cash benefits for the development and implementation of approved business adjustment plans.

§ 1580.102 Definitions.

As used in the part, the following terms mean:

Agricultural commodity means any commodity in its raw or natural state; found in chapters 1, 3, 4, 5, 6, 7, 8, 10, 12, 14, 23, 24, 41, 51, and 52 of the Harmonized Tariff Schedule of the United States (HTS).

Articles like or directly competitive generally means products falling under the same HTS number used to identify the agricultural commodity in the petition. A ''like'' product means substantially identical in inherent or intrinsic characteristics, and the term ''directly competitive'' means articles that are substantially equivalent for commercial purposes (i.e., adapted to the same uses and essentially interchangeable therefore). For fishery products, competition could be either from farm-raised or wild-caught products.

Authorized representative means an entity that represents a group of agricultural commodity producers or fishermen.

Average price received by the producer means the average of the 3 marketing year prices per unit received by the producer from the first level of sales for the commodity, not weighted by production.

Cash receipts mean the value of commodity marketings during the calendar year, irrespective of the year of production, as calculated by the Economic Research Service of the USDA.

Certification of eligibility means the date on which the Administrator (FAS) announces in the **Federal Register** or by Department news release, whichever comes first, a certification of eligibility to apply for trade adjustment assistance.

Contributed importantly means a cause which is important, but not necessarily more important than any other cause.

CSREES means the Cooperative State Research, Education, and Extension Service (will be renamed the National Institute of Food and Agriculture on October 1, 2009), the Federal agency within the U.S. Department of

Agriculture which administers the Federal agricultural extension programs.

Department means the U.S. Department of Agriculture.

Family member means an individual to whom a producer is related as spouse, lineal ancestor, lineal descendent, or sibling, including:

(1) Great grandparent;

(2) Grandparent;

(3) Parent;

(4) Children, including legally adopted children;

(5) Grandchildren;

(6) Great grandchildren;

(7) Sibling of the family member in the farming operation; and

(8) Spouse of a person listed in paragraphs (1) through (7) of this definition.

Filing period means the dates during which petitions may be submitted, as published in the **Federal Register**.

FSA means the Farm Service Agency of the U.S. Department of Agriculture.

Group means three or more producers who are not members of the same family.

Impacted area means one or more States of the United States.

Marketing year means the marketing season or year designated by the Administrator (FAS) with respect to an agricultural commodity. In the case of an agricultural commodity that does not have a designated marketing year, a calendar year will be used.

National average price means the average price paid to producers for an agricultural commodity in a marketing year as determined by the National Agricultural Statistics Service (NASS) of the U.S. Department of Agriculture, or the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration, when available, or when unavailable, as determined by the Administrator (FAS).

Producer means a person who shares in the risk of producing an agricultural commodity and is entitled to a share of the commodity for marketing; including an operator, a sharecropper, or a person who owns or rents the land on which the commodity is produced; or a person who reports gain or loss from the trade or business of fishing on the person's annual Federal income tax return for the taxable year that most closely corresponds to the marketing year with respect to which a petition is filed.

Raw or natural state means unaltered by any process other than cleaning, grading, coating, sorting, trimming, mixing, conditioning, drying, dehulling, shelling, chilling, cooling, blanching, irradiating, or fumigating.

State Cooperative Extension Service means an organization established at the land-grant college or university under the Smith-Lever Act of May 8, 1914, as amended (7 U.S.C. 341–349); section 209(b) of the Act of October 26, 1974, as amended (D.C. Code, through section 31–1719(b)); or section 1444 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3221).

United States means the 50 States of the United States, the District of Columbia, and Puerto Rico.

Value of production means the value of commodities produced during the crop year calculated as production times the marketing year average price. This may be equal to cash receipts when the crop year for the commodity runs from January through December.

§ 1580.201 Petitions for trade adjustment assistance.

(a) A group of producers in the United States or its authorized representative may file a petition for trade adjustment assistance.

(b) Filings may be written or electronic, as provided for by the Administrator (FAS), and submitted to FAS no later than the last day of the filing period announced in the **Federal Register**. Petitions received after this date will be returned to the sender.

(c) Petitions shall include the following information.

(1) Name, business address, phone number, and email address (if available) of each producer in the group, or its authorized representative. The petition shall identify a contact person for the group.

(2) The agricultural commodity and its Harmonized Tariff Schedule of the United States (HTS) number.

(3) The production area represented by the group or its authorized representative. The petition shall indicate if the group is filing on behalf of all producers in the United States, or if it is filing solely on behalf of all producers in a specifically identified impacted area. In the latter case, at least one member of the group must reside in each State within the impacted area.

(4) The beginning and ending dates for the marketing year upon which the petition is based. A petition may be filed for only the most recent full marketing year for which data are available for national average prices, or quantity of production, or value of production, or cash receipts.

(5) A justification statement explaining why the petitioners should be considered eligible for adjustment assistance.

(6) Supporting information justifying the basis of the petition, including required data for the petitioned marketing year and the previous 3 marketing years.

(i) Whenever possible, the petitioners shall use national average data compiled by the National Agricultural Statistics Service (NASS) or the National Marine Fisheries Service (NMFS), to determine national average prices, or quantity of production, or value of production, or cash receipts. If NASS or NMFS has not compiled such data for the commodity, the petitioners shall provide alternative data for the marketing year under review and for the previous 3 marketing years, and identify the source of the data. In such cases the Administrator (FAS) shall determine if the alternative data is acceptable.

(ii) If the petition is filed on behalf of producers in a specifically identified impacted area, the petitioners shall provide:

(A) The national average prices or county prices if applicable, or quantity of production or value of production, or cash receipts for the petitioned commodity in the impacted area for the marketing year under review and for the previous three marketing years, and identification of the data source.

(B) [Reserved]

(iii) The Administrator (FAS) may request petitioners to provide records to support their data.

(d) Once the petition is received, the Administrator (FAS) shall determine if it meets the requirements of § 1580.201(c) of this section, and if so, publish notice in the **Federal Register** that a petition has been accepted and that an investigation is being initiated. The notice shall identify the agricultural commodity, including any like or directly competitive commodities, the marketing year being investigated, the data being used, and the production area covered by the petition. The notice may also announce the scheduling of a public hearing, if requested by the petitioner. If the petition does not meet the requirements of § 1580.201(c) of this section, the Administrator (FAS) shall notify as soon as practicable the contact person or the authorized representative for the group of the deficiencies.

§ 1580.202 Hearings, petition reviews, and amendments.

(a) If the petitioner, or any other person found by the Administrator (FAS) to have a substantial interest in the proceedings, submits not later than 10 days after the date of publication of notice in the **Federal Register** under § 1580.201(d) of this title, a request in writing for a hearing, the Administrator (FAS) shall provide for a public hearing and afford such interested person an

opportunity to be present, to produce evidence, and to be heard.

(b) If the petitioner or any other person having an interest in the proceedings takes issue with any of the information published in the **Federal Register** concerning the petition, such person may submit to the Administrator (FAS) their comments in writing or electronically for consideration by the Administrator (FAS) not later than 10 days after the date of publication of notice in the **Federal Register** under § 1580.201(d) of this title.

(c) A producer or group of producers that resides outside of the State or region identified in the petition filed under paragraph (a) of this section, may file a request to become a party to that petition not later than 15 days after the date that the notice is published in the **Federal Register** under § 1580.201(d) of this title. The Administrator (FAS) may amend the original petition to expand the impacted area and include the additional filer, or consider it a separate filing.

(d) The Administrator (FAS) shall publish in the **Federal Register** as soon as practicable any changes to the original notice resulting from any actions taken under this section.

§ 1580.203 Determination of eligibility and certification by the Administrator (FAS).

(a) As soon as practicable after the petition has been accepted, but in any event not later than 40 days after that date, the Administrator (FAS) shall certify a group of producers as eligible to apply for adjustment assistance under this chapter if the Administrator (FAS) determines:

(1) At least one of the following:

(i) The national average price of the agricultural commodity produced by the group during the most recent marketing year for which data are available is less than 85 percent of the average of the national average price for the commodity in the 3 marketing years preceding such marketing year; or

(ii) The quantity of production of the agricultural commodity produced by the group during such marketing year is less than 85 percent of the average of the quantity of production of the commodity produced by the group in the 3 marketing years preceding such marketing year; or

(iii) The value of production of the agricultural commodity produced by the group during such marketing year is less than 85 percent of the average value of production of the commodity produced by the group in the 3 marketing years preceding such marketing year; or

(iv) The cash receipts for the agricultural commodity produced by the group during such marketing year are less than 85 percent of the average of the cash receipts for the commodity produced by the group in the 3 marketing years preceding such marketing year;

(2) The volume of imports of articles like or directly competitive with the agricultural commodity produced by the group in the marketing year with respect to which the group files the petition increased compared to the average volume of such imports during the 3 marketing years preceding such marketing year; and

(3) The increase in such imports contributed importantly to the decrease in the national average price, or quantity of production, or value of production, or cash receipts for, the agricultural commodity.

(b) In any case in which there are separate classes of goods within an agricultural commodity, the Administrator (FAS) shall treat each class as a separate commodity in determining;

(1) Group eligibility;

(2) The national average price, or quantity of production, or value of production, or cash receipts; and

(3) The volume of imports.

(c) Upon making a determination, whether affirmative or negative, the Administrator (FAS) shall promptly publish in the **Federal Register** a summary of the determination, together with the reasons for making the determination.

(d) In addition, the Administrator (FAS) shall notify producers covered by a certification how to apply for adjustment assistance. Notification methods may include direct mailings to known producers, messages to directly affected producer groups and organizations, electronic communications, website notices on the Internet, use of broadcast print media, and transmittal through local USDA offices.

(e) Whenever a group of agricultural producers is certified as eligible to apply for assistance, the Administrator (FAS) shall notify CSREES, Agricultural Marketing Service and FSA who will assist in informing other producers about the TAA for Farmers program and how they may apply for trade adjustment assistance.

§ 1580.301 Application for trade adjustment assistance.

(a) Only producers covered by a certification of eligibility under § 1580.203 of this title, may apply for adjustment assistance.

(b) An eligible producer may submit an application for adjustment assistance by submitting to FSA a designated application form at any time after the certification date but not later than 90 days after the certification date. If the 90-day application period ends on a weekend or legal holiday, the producer may apply the following business day.

(c) When submitting an application, the producer shall provide sufficient documentation to establish that:

(1) The producer produced the agricultural commodity in the marketing year for which the petition is filed and in at least 1 of the 3 marketing years preceding that marketing year;

(2) There has been a decrease in the quantity of the agricultural commodity produced by the producer in the marketing year for which the petition is certified from the most recent prior marketing year preceding that marketing year for which data is available; or

(3) There has been a decrease in the price of the agricultural commodity based on:

(i) The price received for the agricultural commodity by the producer during the marketing year with respect to which the petition is filed from the average price for the commodity received by the producer in the 3 marketing years preceding that marketing year; or

(ii) The effective posted county price maintained by FSA for the agricultural commodity on the date on which the petition is filed from the average effective posted county level price for the commodity in the 3 marketing years preceding the date on which the petition is filed.

(4) If a petition is certified with respect to a commodity not produced by the producer every year, the producer may establish the average price received by the producer for the commodity in the 3 marketing years preceding the year in which the petition is filed by using annual price data for the 3 most recent marketing years in which the producer produced the commodity.

(5) The producer must certify that they have not received cash benefits under the Trade Adjustment Assistance for Workers or Trade Adjustment Assistance for Firms programs; or TAA for Farmers benefits based on the production of an agricultural commodity covered by another TAA for Farmers petition.

(d) The producer must certify that:

(1) Their average gross nonfarm income for the year in which the petition is certified does not exceed $500,000, and

(2) Their average adjusted gross farm income does not exceed $750,000.

(e) The total amount of payments made to a producer under this part

during any crop year may not exceed the limitations on payments applicable to counter-cyclical and Average Crop Revenue Election (ACRE) payments.

(f) If requested by FSA, a producer must provide documentation regarding average adjusted gross income and payment limitations.

§ 1580.302 Technical assistance and services.

(a) *Initial Technical Assistance:* A producer covered by a certification who has been determined by FSA to meet the requirements of § 1580.301 of this title, is eligible to receive Initial Technical Assistance through CSREES to be completed within 180 days of petition certification. Such assistance shall include information regarding:

(1) Improving the yield and marketing of that agricultural commodity, and

(2) The feasibility and desirability, of substituting one or more agricultural commodities for that agricultural commodity.

(b) *Intensive Technical Assistance:* Upon completion of Initial Technical Assistance, a producer is eligible to participate in Intensive Technical Assistance. Intensive Technical Assistance shall consist of:

(1) A series of courses to further assist the producer in improving the competitiveness of producing the agricultural commodity certified under § 1580.203 of this title, or another agricultural commodity, and

(2) Assistance in developing an initial business plan based on the courses completed under paragraph (a) of this section.

(c) During Intensive Technical Assistance, CSREES shall deliver and the producer shall be required to attend a series of Intensive Technical Assistance workshops relevant to the circumstances of the producer.

(d) *Initial Business Plan:* Upon completion of the Initial and Intensive Technical Assistance, the producer shall be required to develop an Initial Business Plan recommended by CSREES and approved by the Administrator (FAS) before receiving an adjustment assistance payment. The Initial Business Plan will:

(1) Reflect the skills gained by the producer through the courses described in paragraph (c); and

(2) Demonstrate how the producer will apply those skills to the circumstances of the producer.

(e) Upon approval of the Initial Business Plan, the producer will receive an amount not to exceed $4,000 to implement the Initial Business Plan or develop a Long-Term Business Adjustment Plan.

(f) A producer who completes the Intensive Technical Assistance and whose Initial Business Plan has been approved shall be eligible, in addition to the amount under paragraph (e) of this section, for assistance in developing a Long-Term Business Adjustment Plan.

(g) *Long-Term Business Adjustment Plan:* The Long-Term Business Adjustment Plan shall:

(1) Include steps reasonably calculated to materially contribute to the economic adjustment of the producer to changing market conditions;

(2) Take into consideration the interests of the workers employed by the producer; and

(3) Demonstrate that the producer will have sufficient resources to implement the business plan.

(h) Upon recommendation by CSREES and approval of the producer's Long-Term Business Adjustment Plan by the Administrator (FAS), the producer shall be entitled to receive an amount not to exceed $8,000 to implement their Long-Term Business Adjustment Plan.

(i) The Initial Business Plan and Long-Term Business Adjustment Plan must be completed and approved within 36 months after a petition is certified.

(j) A producer shall not receive a combined total of more than $12,000 for the Initial Business Plan and the Long Term Business Adjustment Plan in the 36-month period following petition certification.

(k) The Administrator (FAS) may authorize supplemental assistance necessary to defray reasonable transportation and subsistence expenses incurred by a producer in connection with the initial technical assistance, if such initial technical assistance is provided at facilities that are not within normal commuting distance of the regular place of residence of the producer. CSREES and FSA will work with the producer and the Administrator (FAS) to facilitate application for and proper payment of reasonable allowable supplemental expenses. The Administrator (FAS) will not authorize payments to a producer:

(1) For subsistence expenses that exceed the lesser of:

(i) The actual per diem expenses for subsistence incurred by a producer; or

(ii) The prevailing per diem allowance rate authorized under Federal travel regulations; or

(2) For travel expenses that exceed the prevailing mileage rate authorized under the Federal travel regulations.

§ 1580.303 Adjustment assistance payments.

(a) If the Administrator (FAS) determines that insufficient appropriated fiscal year funds are available to provide maximum cash benefits to all eligible applicants, after having deducted estimated transportation and substance payments and administrative and technical assistance costs, the Administrator (FAS) shall prorate cash payments to producers for the approved initial and long-term business plans.

(b) Any producer who may be entitled to a payment may assign their rights to such payment in accordance with 7 CFR part 1404 or successor regulations as designated by the Department.

(c) In the case of death, incompetency, disappearance, or dissolution of a producer that is eligible to receive benefits in accordance with this part, such producer or producers specified in 7 CFR part 707 may receive such benefits.

§ 1580.401 Subsequent year petition recertification.

(a) Prior to the anniversary of the petition certification date:

(1) Groups or authorized representatives that provided the data to justify their initial petition shall provide the Administrator (FAS) data for the most recent marketing year, and

(2) The Administrator (FAS) shall make a determination with respect to the re-certification of petitions for the subsequent year by applying criteria as set forth in § 1580.203 of this title for the most recent marketing year.

(b) The Administrator (FAS) will promptly publish in the **Federal Register** the determination with the reasons for the determination.

(c) If a petition is re-certified, only eligible producers who did not receive training and cash benefits under this program may apply.

§ 1580.501 Administration.

(a) The petition process will be administered by FAS. FAS will publish in the **Federal Register** the filing dates for commodity groups to file petitions.

(b) FSA will administer the producer application and payment process.

(c) State and county FSA committees and representatives do not have the authority to modify or waive any of the provisions of this part.

(d) The technical assistance process and the recommendation for approval of all producer business plans will be under the general supervision of CSREES. CSREES may award the technical assistance and services to a state cooperative extension service.

§ 1580.502 Maintenance of records, audits and compliance.

(a) Producers making application for benefits under this program must

maintain accurate records and accounts that will document that they meet all eligibility requirements specified herein, as may be requested. Such records and accounts must be retained for 2 years after the date of the final payment to the producer under this program.

(b) At all times during regular business hours, authorized representatives of the U.S. Department of Agriculture or any agency thereof, the Comptroller General of the United States shall have access to the premises of the producer in order to inspect, examine, and make copies of the books, records, and accounts, and other written data as specified in paragraph (a) of this section.

(c) Audits of certifications of average adjusted gross income may be conducted as necessary to determine compliance with the requirements of this subpart. As a part of this audit, income tax forms may be requested and if requested, must be supplied. If a producer has submitted information to FSA, including a certification from a certified public accountant or attorney, that relied upon information from a form previously filed with the Internal Revenue Service, such producer shall provide FSA a copy of any amended form filed with the Internal Revenue Service within 30 days of the filing.

(d) If requested in writing by the U.S. Department of Agriculture or any agency thereof, or the Comptroller General of the United States, the producer shall provide all information and documentation the reviewing authority determines necessary to verify any information or certification provided under this subpart, including all documents referred to in § 1580.301(c) of this title, within 30 days. Acceptable production documentation may be submitted by facsimile, in person, or by mail and may include copies of receipts, ledgers, income statements, deposit slips, register tapes, invoices for custom harvesting, records to verify production costs, contemporaneous measurements, truck scale tickets, fish tickets, landing reports, and contemporaneous diaries that are determined acceptable. Failure to provide necessary and accurate information to verify compliance, or failure to comply with this part's requirements, will result in ineligibility for all program benefits subject to this part for the year or years subject to the request.

§ 1580.503 Recovery of overpayments.

(a) If the Administrator (FAS) determines that any producer has received any payment under this program to which the producer was not entitled, or has expended funds received under this program for any purpose that was not approved by the Administrator (FAS) such producer will be liable to repay such amount. The Administrator (FAS) may waive such repayment if it is determined that:

(1) The payment was made without fault on the part of the producer; and

(2) Requiring such repayment would be contrary to equity and good conscience.

(b) Unless an overpayment is otherwise recovered, or waived under paragraph (a) of this section, the Administrator (FAS) shall recover the overpayment as a debt following the procedures in 7 CFR part 3. The requirement for demand and notice and opportunity for a hearing under the debt collection procedures in 7 CFR part 3 shall satisfy the notice and hearing requirements under 19 U.S.C. 2401f(c), and the appeal procedures in § 1580.505 of this title shall not apply to collection of overpayments.

§ 1580.504 Debarment and suspension and penalties.

(a) *Generally.* The regulations governing Governmentwide Debarment and Suspension (Nonprocurement), 7 CFR part 3017, and Government Requirements for Drug-Free Workplace (Financial Assistance), 7 CFR part 3021, apply to this part.

(b) *Additional specific suspension and debarment provision for this program.* In addition to any other debarment or suspension of a producer under paragraph (a) of this section, in connection with this program, if the Administrator (FAS) or a court of competent jurisdiction determines that a producer:

(1) Knowingly has made, or caused another to make, a false statement or representation of a material fact, or

(2) Knowingly has failed, or caused another to fail, to disclose a material fact; and, as a result of such false statement or representation, or of such nondisclosure, such producer has received any payment under this program to which the producer was not entitled, the Administrator (FAS) shall suspend and debar such producer from any future payments under this program, as provided in 19 U.S.C. 2401f(b).

(c) *Criminal penalty.* Whoever makes a false statement of a material fact knowing it to be false, or knowingly fails to disclose a material fact, for the purpose of obtaining or increasing for himself or for any other producer any payments authorized to be furnished under this program shall be fined not more than $10,000 or imprisoned for not more than 1 year, or both.

§ 1580.505 Appeals.

(a) A producer adversely affected by a determination with respect to their application for trade adjustment assistance under § 1580.301 or with respect to the receipt of technical assistance or payments under § 1580.302 may file a notice of appeal within 30 days of the date that the notification of the adverse determination was sent. The notice of appeal should indicate whether the producer is requesting a hearing.

(b) Any hearing conducted under paragraph (a) of this section, shall be in accordance with instructions issued by the Administrator (FAS).

(c) A producer may not seek judicial review of any adverse decision under this paragraph without receiving a final determination pursuant to this paragraph.

§ 1580.506 Judicial review.

Any producer aggrieved by a final agency determination under this part may appeal to the U.S. Court of International Trade for a review of such determination in accordance with its rules and procedures.

§ 1580.602 Paperwork Reduction Act assigned number.

The information collection requirements contained in these regulations (7 CFR part 1580) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and been assigned OMB control number 0551–0040.

Dated: June 10, 2009.

Michael V. Michener,

Administrator, Foreign Agricultural Service.

[FR Doc. E9–20345 Filed 8–24–09; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0717; Directorate Identifier 2009–NM–002–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Following scheduled maintenance, an A310 operator reported finding cracks around the wing top skin panels fastener holes at Rib 2 (LH or RH) [left-hand or right-hand], between stringers 2 and 14 on some of its aircraft.

This condition, if not corrected, may lead to degradation of the structure in this area. An inspection programme is necessary to restore and retain the structural integrity.

* * * * *

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by September 24, 2009.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus, Airbus SAS–EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; e-mail: *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0717; Directorate Identifier 2009–NM–002–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency, which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2008–0211, dated December 4, 2008 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

Following scheduled maintenance, an A310 operator reported finding cracks around the wing top skin panels fastener holes at Rib 2 (LH or RH) [left-hand or right-hand], between stringers 2 and 14 on some of its aircraft.

This condition, if not corrected, may lead to degradation of the structure in this area. An inspection programme is necessary to restore and retain the structural integrity.

For the reason described above, this AD requires the implementation of an inspection programme that will ensure that any visible cracks in the wing top skin panels 1 and 2 along Rib 2 are detected in time and repaired appropriately.

Note: The General Visual Inspection requested by the existing and applicable Airworthiness Limitation Items (ALI) tasks may not be adequate to detect these cracks.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued Mandatory Service Bulletin A310–57–2096, dated May 6, 2008. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a note within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 66 products of U.S. registry. We also estimate that it would take about 2 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $10,560, or $160 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more

detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Airbus: Docket No. FAA–2009–0717; Directorate Identifier 2009–NM–002–AD.

Comments Due Date

(a) We must receive comments by September 24, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes; certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 57: Wings.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

Following scheduled maintenance, an A310 operator reported finding cracks around the wing top skin panels fastener holes at Rib 2 (LH or RH) [left-hand or right-hand], between stringers 2 and 14 on some of its aircraft.

This condition, if not corrected, may lead to degradation of the structure in this area. An inspection programme is necessary to restore and retain the structural integrity.

For the reason described above, this AD requires the implementation of an inspection programme that will ensure that any visible cracks in the wing top skin panels 1 and 2 along Rib 2 are detected in time and repaired appropriately.

Note: The General Visual Inspection requested by the existing and applicable Airworthiness Limitation Items (ALI) tasks may not be adequate to detect these cracks.

Actions and Compliance

(f) Unless already done, do the following actions:

(1) Do a detailed visual inspection around fastener holes in the wing top skin panels 1 and 2, along rib 2 between the right side and left side of the front and rear spars, at the applicable compliance time in Table 1 of this AD; as applicable to the airplane model and Short Range (SR) use, average flight time (AFT) equal to or less than 4 hours; or Long Range (LR) use, AFT exceeding 4 hours; in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–57–2096, dated May 6, 2008.

Note 1: To establish the AFT, take the accumulated flight time (counted from the take-off up to the landing) and divide by the number of accumulated flight cycles. This gives the average flight time per flight cycle.

TABLE 1—COMPLIANCE TIMES FOR DETAILED VISUAL INSPECTION

Model	Compliance time (whichever occurs later)
(i) A310–203, A310–204, A310-221, and A310–222 airplanes.	(A) Prior to the accumulation of 18,700 flight cycles or 37,400 flight hours since first flight of the airplane, whichever occurs first; or (B) Within 430 flight cycles or 860 flight hours, whichever occurs first, after the effective date of this AD.
(ii) 'SR' A310–304, A310–322, A310–324, and A310–325 short range airplanes.	(A) Prior to the accumulation of 17,300 flight cycles or 48,400 flight hours since first flight of the airplane, whichever occurs first; or (B) Within 400 flight cycles or 1,100 flight hours, whichever occurs first, after the effective date of this AD.
(iii) 'LR' A310–304, A310–322, A310-324, and A310–325 long range airplanes.	(A) Prior to accumulation of 12,800 flight cycles or 64,300 flight hours since first flight of the airplane, whichever occurs first; or (B) Within 300 flight cycles or 1,450 flight hours, whichever occurs first, after the effective date of this AD.

(2) As of the effective date of this AD, if any repair has already been done as a result of finding skin cracks at rib 2 in the area to be inspected, the inspection requirements of this AD are not required for the repaired area. Instead, for previously repaired areas, continue the inspection in accordance with the procedures specified in paragraph (g) of this AD. The rest of the rib 2 area not covered by the repair must be inspected in accordance with the requirements of this AD.

(3) If no crack is found, repeat the inspection required by paragraph (f)(1) of this AD thereafter at the intervals not to exceed those specified in Table 2 of this AD, as applicable.

TABLE 2—COMPLIANCE TIMES FOR REPETITIVE INSPECTION INTERVAL

Model	Repetitive inspection interval
A310–203, A310–204, A310-221, and A310–222 airplanes	Within 1,700 flight cycles or 3,500 flight hours, whichever occurs first.
'SR' A310–304, A310–322, A310–324, and A310–325 short range airplanes.	Within 1,600 flight cycles or 4,600 flight hours, whichever occurs first.
'LR' A310–304, A310–322, A310-324, and A310–325 long range airplanes.	Within 1,200 flight cycles or 6,100 flight hours, whichever occurs first.

(4) If any crack is found during any inspection required by paragraph (f)(1) or (f)(3) of this AD, before further flight, repair in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–57–2096, dated May 6, 2008. Instead, for previously repaired areas, continue the inspection in accordance with the procedures specified in paragraph (g) of this AD.

(5) After each inspection required by this AD, submit an inspection report in accordance with Airbus Mandatory Service Bulletin A310–57–2096, dated May 6, 2008; at the times specified in paragraphs (f)(5)(i) or (f)(5)(ii) of this AD, as applicable.

(i) If the inspection was done after the effective date of this AD: Submit the report within 30 days after the inspection.

(ii) If the inspection was accomplished prior to the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2008–0211, dated December 4, 2008; and Airbus Mandatory Service Bulletin A310–57–2096, dated May 6, 2008, for related information.

Issued in Renton, Washington, on August 17, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–20352 Filed 8–24–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0718; Directorate Identifier 2009–NM–025–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Boeing Model 747 airplanes. This proposed AD would require one-time detailed and high frequency eddy current inspections for cracks in the wing and horizontal stabilizer side-of-body joints and the fuselage skin circumferential splices, and repair if necessary. This proposed AD would also require, for certain airplanes, repetitive detailed inspections for cracks of the fuselage skin circumferential splices, and repair if necessary. This proposed AD results from Boeing analysis indicating that the wing and horizontal stabilizer side-of-body joints, and the fuselage skin circumferential splices are susceptible to fatigue cracking due to high cyclic loads on the airplane. We are proposing this AD to detect and correct fatigue cracking at multiple adjacent locations in the subject areas, which could connect to form large cracks and result in reduced structural integrity leading to rapid decompression and consequent loss of control of the airplane.

DATES: We must receive comments on this proposed AD by October 9, 2009.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1, fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Ivan Li, Aerospace Engineer, Airframe

Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6437; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0718; Directorate Identifier 2009–NM–025–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

Boeing analysis indicates that the wing and horizontal stabilizer side-of-body joints and the fuselage skin circumferential splices on Model 747 airplanes are susceptible to fatigue cracking due to high cyclic loads on the airplane. This condition, if not corrected, could result in reduced structural integrity leading to rapid decompression and consequent loss of control of the airplane.

Related Rulemaking

On March 24, 2004, we issued AD 2004–07–22, amendment 39–13566 (69 FR 18250, April 7, 2004), for all Boeing Model 747 series airplanes. (A correction of AD AD 2004–07–22 was issued on December 26, 2007 (73 FR 1052, January 7, 2008), to clarify the AD applicability.) That AD supersedes two existing ADs which require that the maintenance inspection program be revised to include inspections that will give no less than the required damage tolerance rating for each structural significant item, and repair of cracked structure. That AD also requires additional and expanded inspections, and repair of cracked structure. That AD resulted from a structural re-evaluation that identified additional structural elements where, if damage were to occur, supplemental inspections may be required for timely detection of fatigue cracking. We issued that AD to ensure the continued structural integrity of the entire fleet of Model 747 series airplanes.

On January 29, 2004, we issued AD 2004–03–09, amendment 39–13453 (69 FR 6542, February 11, 2004), for all Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200F, 747–200C, 747–300, 747SR, and 747SP series airplanes. That AD requires repetitive inspections for discrepancies of the structure near and common to the upper chord and splice fittings of the rear spar of the wing, and repair if necessary. That AD also provides for an optional modification that, if accomplished, terminates the repetitive inspection requirement, but would necessitate eventual post-modification inspections. We issued that AD to find and fix fatigue cracking of structure near and common to the upper chord and splice fittings of the rear spar of the wing, which could result in loss of structural integrity of the airplane.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 747–51A2060, dated October 30, 2008. The service bulletin describes procedures for one-time detailed and open-hole high frequency eddy current (HFEC) inspections for cracks in the wing side-of-body (SOB) joint upper and lower surfaces; one-time detailed and open-hole HFEC inspections for cracks in the horizontal stabilizer SOB joint; one-time surface and open-hole HFEC inspections for cracks of the fuselage skin circumferential splices; as applicable; and repair if necessary. The service bulletin also describes procedures, for certain airplanes, for repetitive detailed inspections for cracks of the fuselage skin circumferential splices. The service bulletin also allows surface HFEC inspections as an option for doing certain open-hole HFEC inspections for cracks in the horizontal stabilizer SOB joint surfaces. For airplanes on which any crack is found during any inspection, the procedures include reporting the crack finding to Boeing and contacting Boeing for repair data, and repairing before further flight.

The compliance times for the inspections are as follows:

- For Groups 1 through 5 airplanes, for the detailed inspection of the fuselage skin circumferential splices: Before the accumulation of 25,000 total flight cycles, or within 1 year after the date on the service bulletin, whichever occurs later. For airplanes on which no crack is found, the inspection is repeated within 6,000 flight cycles after the initial inspection, and thereafter at intervals not to exceed 6,000 flight cycles.
- For Groups 1 through 3 airplanes, for the detailed and open-hole HFEC inspections of the wing SOB joint upper and lower surfaces; detailed and open-hole HFEC inspections of the horizontal stabilizer SOB joint; and surface and open-hole HFEC inspections of the fuselage skin circumferential splices are to be done at the later of the following times: Before the accumulation of 30,000 total flight cycles or 115,000 total flight hours (whichever occurs first), or within 1 year after the date on the service bulletin. The service bulletin also specifies that operators do not accomplish the inspections until the airplane has accumulated at least either 28,500 total flight cycles or 110,000 total flight hours.
- For Groups 4 through 6 airplanes for the detailed and open-hole HFEC inspections of the wing SOB joint upper and lower surfaces; detailed and open-hole HFEC inspections of the horizontal stabilizer SOB joint; and surface and open-hole HFEC inspections of the fuselage skin circumferential splices are to be done at the later of the following times: Before the accumulation of 30,000 total flight cycles or 135,000 total flight hours (whichever occurs first), or within 1 year after the date on the service bulletin. The service bulletin also specifies that operators should not accomplish the inspections until the airplane has accumulated at least either 28,500 total flight cycles or 130,000 total flight hours.

FAA's Determination and Requirements of This Proposed AD

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design. This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under ''Difference Between the Proposed AD and Service Information.''

Difference Between the Proposed AD and Service Information

The service bulletin specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

- Using a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization

Organization whom we have authorized to make those findings.

Interim Action

We consider this proposed AD interim action. If final action is later identified, we might consider further rulemaking then.

Costs of Compliance

We estimate that this proposed AD would affect 165 airplanes of U.S. registry. We also estimate that it would take 2,604 work-hours per product to comply with this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this proposed AD to the U.S. operators to be $34,372,800, or $208,320 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866,

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979), and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Boeing: Docket No. FAA–2009–0718; Directorate Identifier 2009–NM–025–AD.

Comments Due Date

(a) We must receive comments by October 9, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes, certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 51: Standard practices/structures.

Unsafe Condition

(e) This AD results from a Boeing analysis indicating that the wing and horizontal stabilizer side-of-body joints, and the fuselage skin circumferential splices are susceptible to fatigue cracking due to high cyclic loads on the airplane. The Federal Aviation Administration is issuing this AD to detect and correct fatigue cracking at multiple adjacent locations in the subject areas, which could connect to form large cracks and result in reduced structural integrity leading to rapid decompression and consequent loss of control of the airplane.

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Inspections and Repair if Necessary

(g) Except as provided by paragraphs (h) and (i) of this AD: At the applicable times specified in paragraph 1.E. of Boeing Alert Service Bulletin 747–51A2060, dated October 30, 2008, do one-time inspections for cracks in the wing and horizontal stabilizer side-of-body joints, and the fuselage skin circumferential splices; do detailed inspections, as applicable, for cracks of the fuselage skin circumferential splices; and do all applicable repairs before further flight, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–51A2060, dated October 30, 2008, except as provided by paragraphs (j) and (k) of this AD. As applicable, repeat the detailed inspection for cracks of the fuselage skin circumferential splices, at the applicable times specified in paragraph 1.E. of Boeing Alert Service Bulletin 747–51A2060, dated October 30, 2008.

Exceptions to Compliance Times

(h) Where Boeing Alert Service Bulletin 747–51A2060, dated October 30, 2008, specifies a compliance time after ''* * * the date on this service bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

(i) Where Note (a) of Table 2 of paragraph 1.E. of Boeing Alert Service Bulletin 747–51A2060, dated October 30, 2008, specifies that if a certain modification was done then certain inspections may be deferred ''until the post modification inspection period as given in Service Bulletin 747–57A2314,'' this AD allows, for airplanes on which the modification specified in Boeing Service Bulletin 747–57A2314 has been done, deferring the inspections specified in Part 2 of paragraph 3.B., of the Work Instructions of Boeing Alert Service Bulletin 747–51A2060, dated October 30, 2008, until the applicable post-modification inspection intervals required by paragraph (e) of AD 2004–03–09, amendment 39–13453.

Exception to Part 4 Actions

(j) For Group 6 airplanes identified in Boeing Alert Service Bulletin 747–51A2060, dated October 30, 2008: Do the inspections specified in Part 4 of paragraph 3.B. of the Work Instructions of Boeing Alert Service Bulletin 747–51A2060, dated October 30, 2008, in accordance with the procedures specified in paragraph (m) of this AD.

Exception to Corrective Actions

(k) If any crack is found during any inspection required by this AD, and Boeing Alert Service Bulletin 747–51A2060, dated October 30, 2008, specifies to contact Boeing for appropriate action: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (m) of this AD.

Reporting Requirement

(l) At the applicable time specified in paragraph (l)(1) or (l)(2) of this AD, submit a report of positive and negative findings of cracks found during the inspection required by paragraph (g) of this AD to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Alternatively, operators may submit reports to their Boeing field service representatives. The report must contain, as a minimum, the following information: airplane serial number, flight cycles at time of discovery, location(s) and extent of positive crack findings. Under the provisions of the

Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

(1) If the inspection was done on or before the effective date of this AD: Send the report within 30 days after the effective date of this AD.

(2) If the inspection was done after the effective date of this AD: Send the report within 30 days after the inspection is done.

Alternative Methods of Compliance (AMOCs)

(m)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6437; fax (425) 917–6590; Or, e-mail information to *9–ANM–Seattle–ACO–AMOC–Requests@faa.gov.*

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

Issued in Renton, Washington, on August 7, 2009.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–20382 Filed 8–24–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 803

[Docket No. FDA–2008–N–0393]

RIN 0910–AF86

Medical Device Reporting: Electronic Submission Requirements

Correction

In proposed rule document E9–19683 beginning on page 42203 in the issue of Friday, August 21, 2009 make the following correction:

On page 42204, in the first column, under the **DATES** section, in the first line, ''November 19, 2009'' should read ''Submit written or electronic comments on the proposed rule by November 19, 2009''.

[FR Doc. Z9–19683 Filed 8–24–09; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 866

[Docket No. FDA–2009–N–0344]

Microbiology Devices; Reclassification of Herpes Simplex Virus Types 1 and 2 Serological Assays

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its device classification regulations by correcting the regulation classifying herpes simplex virus (HSV) serological assays by removing the reference to HSV serological assays other than type 1 and type 2. When reclassifying this device, FDA mistakenly distinguished between HSV serological assays type 1 and type 2 and all other HSV serological assays. At that time, and today, the only preamendments HSV serological assays FDA was aware of were type 1 and type 2, and therefore, the classification of HSV assays other than type 1 and type 2 was incorrect. FDA is correcting the classification of this device to eliminate possible confusion resulting from this error. Elsewhere in this issue of the **Federal Register**, we are publishing a companion direct final rule. This proposed rule will provide a procedural framework to finalize the rule in the event we receive significant adverse comment and withdraw the direct final rule.

DATES: Submit written or electronic comments by November 9, 2009.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2009–N–0344, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Written Submissions

Submit written submissions in the following ways:

- *FAX:* 301–827–6870.
- *Mail/Hand delivery/Courier [For paper, disk, or CD-ROM submissions]:* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

To ensure more timely processing of comments, FDA is no longer accepting comments submitted to the agency by e-mail. FDA encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal, as described previously, in the **ADDRESSES** portion of this document under *Electronic Submissions*.

Instructions: All submissions received must include the agency name and Docket No(s). and Regulatory Information Number (RIN) (if a RIN number has been assigned) for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov*, including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number(s), found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Scott McFarland, Center for Devices and Radiological Health WO/66, rm. 5543, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–6217.

SUPPLEMENTARY INFORMATION:

I. Why Is This Companion Proposed Rule Being Issued?

This proposed rule is a companion to the direct final rule correcting § 866.3305 (21 CFR 866.3305) by removing HSV serological assays other than type 1 and type 2 from the regulation. The direct final rule and this companion proposed rule are substantively identical. This companion proposed rule provides the procedural framework to finalize the rule in the event that the direct final rule receives any significant adverse comment and is withdrawn. We are publishing the direct final rule because we believe the rule is noncontroversial, and we do not anticipate receiving any significant adverse comments. If no significant

adverse comment is received in response to the direct final rule, no further action will be taken related to this proposed rule. Instead, we will publish a confirmation document within 30 days after the comment period ends confirming when the direct final rule will go into effect.

If we receive any significant adverse comment regarding the direct final rule, we will withdraw the direct final rule within 30 days after the comment period ends and proceed to respond to all of the comments under this companion proposed rule using usual notice-and-comment rulemaking procedures under the Administrative Procedure Act (APA) (5 U.S.C. 552a *et seq.*). The comment period for this companion proposed rule runs concurrently with the direct final rule's comment period. Any comments received under this companion proposed rule will also be considered as comments regarding the direct final rule and vice versa. We will not provide additional opportunity for comment. A significant adverse comment is defined as a comment that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. In determining whether an adverse comment is significant and warrants withdrawing a direct final rulemaking, we will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process in accordance with section 553 of the APA (5 U.S.C. 553).

Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered adverse under this procedure. For example, a comment recommending an additional change to the rule will not be considered a significant adverse comment, unless the comment states why the rule would be ineffective without the additional change. In addition, if a significant adverse comment applies to part of a rule, and that part can be severed from the remainder of the rule, we may adopt as final those parts of the rule that are not the subject of a significant adverse comment.

In the **Federal Register** of November 21, 1997 (62 FR 62466), you can find additional information about FDA's direct final rulemaking procedures in the guidance document entitled ''Guidance for FDA and Industry: Direct Final Rule Procedures.'' This guidance document may be accessed at *http://www.fda.gov/regulatoryinformation/guidances.htm.*

II. What Is the Background of the Rule?

The Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Public Law 94–295), the Safe Medical Devices Act of 1990 (SMDA) (Public Law 101–629), the Food and Drug Modernization Act of 1997 (FDAMA) (Public Law 105–115), and the Food and Drug Administration Amendments Act of 2007 (FDAAA) (Public Law 110–85), among other amendments, established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), are commonly referred to as ''preamendments devices.'' Under section 513 of the act, FDA classifies preamendments devices according to the following steps: (1) FDA receives a recommendation from a device classification panel (an FDA advisory committee); (2) FDA publishes the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) FDA publishes a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution before May 28, 1976, are commonly referred to as ''postamendments devices.'' These devices are classified automatically by statute (section 513(f) of the act (21 U.S.C. 360c(f)) into class III and require premarket approval, unless and until: (1) FDA reclassifies the device into class I or II; (2) FDA issues an order classifying the device into class I or II in accordance with section 513(f)(2) of the act; or (3) FDA issues an order under section 513(i) of the act (21 U.S.C. 360c(i)) finding the device to be substantially equivalent to a predicate device that does not require premarket approval.

In the **Federal Register** of November 9, 1983 (47 FR 50823), FDA classified the preamendments devices, herpes simplex virus serological reagents, into class III (21 CFR 866.3305). At the time FDA classified the device, the only preamendments HSV serological assays FDA was aware of were type 1 and type 2 HSV serological assays. Since that time, FDA has not become aware of any other preamendments HSV serological assays, nor has it received a premarket notification for a HSV serological assay other than a type 1 or type 2 HSV serological assay.

In the **Federal Register** of April 3, 2007 (72 FR 15828), FDA published a final rule reclassifying the preamendments device HSV serological assays from class III to class II. In that rulemaking FDA identified the device being reclassified as type 1 and type 2 HSV serological assays and identified other HSV serological assays as class III devices. However, as stated previously, the only preamendments HSV serological assays which FDA is aware of are type 1 and type 2 HSV serological assays. To avoid any possible confusion, FDA is correcting the regulation to accurately describe this generic type of device. This proposed final rule corrects the classification regulation by removing the reference to HSV serological assays other than type 1 and type 2.

III. What Does This Companion Proposed Rule Do?

In this proposed rule, FDA is correcting § 866.3305 by removing the reference to HSV serological assays other than type 1 and type 2 from the regulation.

IV. What is the Legal Authority for This Proposed Rule?

FDA is issuing this proposed rule under the device and general administrative provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 360i, 371, and 374).

V. What is the Environmental Impact of This Proposed Rule?

FDA has determined under 21 CFR 25.30(i) and 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. What is the Economic Impact of This Proposed Rule?

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory

approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is not a significant regulatory action under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because we do not believe any companies are currently selling or producing these devices, the agency proposes to certify that the final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $133 million, using the most current (2008) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this proposed rule to result in any 1-year expenditure that would meet or exceed this amount.

VII. How Does the Paperwork Reduction Act of 1995 Apply to This Proposed Rule?

This proposed rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) is not required.

VIII. What Are the Federalism Impacts of This Proposed Rule?

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

IX. How Do You Submit Comments on This Proposed Rule?

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 866

Biologics, Laboratories, and Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed to amend 21 CFR part 866 as follows:

PART 866—IMMUNOLOGY AND MICROBIOLOGY DEVICES

1. The authority citation for 21 CFR part 866 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 866.3305 is amended by removing paragraph (c) and by revising paragraph (b) to read as follows:

§ 866.3305 Herpes simplex virus serological assays.

* * * * *

(b) *Classification.* Class II (special controls). The device is classified as class II (special controls). The special control for the device is FDA's guidance document entitled ''Class II Special Controls Guidance Document: Herpes Simplex Virus Types 1 and 2 Serological Assays.'' For availability of the guidance document, see § 866.1(e).

Dated: August 17, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–20415 Filed 8–24–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 40, 41, 44, and 45

[Docket No. TTB–2009–0002; Notice No. 98; Re: Notice No. 95, T.D. TTB–78 and T.D. TTB–80]

RIN 1513–AB72

Implementation of Statutory Amendments Requiring the Qualification of Manufacturers and Importers of Processed Tobacco and Other Amendments Related To Permit Requirements, and the Expanded Definition of Roll-Your-Own Tobacco; Extension of Comment Period

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking; reopening of comment period.

SUMMARY: In response to a request filed on behalf of several industry members, the Alcohol and Tobacco Tax and Trade Bureau is reopening the comment period for Notice No. 95, a notice of proposed rulemaking published in the **Federal Register** on June 22, 2009. The proposed rule seeks comments on a concurrently published temporary rule implementing permit requirements for manufacturers and importers of processed tobacco and an expansion of the definition of roll-your-own tobacco adopted in the Children's Health Insurance Program Reauthorization Act of 2009. The text of the regulations contained in the temporary rule serves as the text of the proposed regulations.

DATES: The comment period for the proposed rule (Notice No. 95) published June 22, 2009, at 74 FR 29433 is reopened. Written comments on Notice No. 95 must now be received on or before October 20, 2009.

ADDRESSES: You may send comments on Notice No. 95 to one of the following addresses:

- *http://www.regulations.gov* (via the online comment form for Notice No. 95 as posted within Docket No. TTB–2009–0002 at ''Regulations.gov,'' the Federal e-rulemaking portal);
- Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412; or
- *Hand Delivery/Courier in Lieu of Mail:* Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200–E, Washington, DC 20005.

See the Public Participation section of Notice No. 95 for specific instructions and requirements for submitting

comments, and for information on how to request a public hearing.

You may view copies of this notice, Notice No. 95, any comments received, the related temporary rule (T.D. TTB–78), and a correction to the temporary rule (T.D. TTB–80) at *http://www.regulations.gov.* A direct link to the related Regulations.gov docket also is available under Notice No. 95 on the TTB Web site at *http://www.ttb.gov/regulations_laws/all_rulemaking.shtml.* You also may view copies of these documents by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. To make an appointment, call 202–453–2270 (new phone number).

FOR FURTHER INFORMATION CONTACT: For questions concerning processed tobacco permit and authorization procedures, contact the National Revenue Center, Alcohol and Tobacco Tax and Trade Bureau at 1–877–882–3277; for other questions concerning this document, Notice No. 95, or the related temporary rule, contact Amy Greenberg, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau at 202–453–2099 (new phone number).

SUPPLEMENTARY INFORMATION: In the **Federal Register** issue of June 22, 2009, the Alcohol and Tobacco Tax and Trade Bureau (TTB) published a temporary rule (T.D. TTB–78; 74 FR 29401) setting forth regulatory amendments to 27 CFR parts 40, 41, 44, and 45 to implement certain changes made to the Internal Revenue Code of 1986 by the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) (Pub. L. 111–3, 123 Stat. 8). The principal changes made by CHIPRA involve permit and related requirements for manufacturers and importers of processed tobacco and an expansion of the definition of roll-your-own tobacco.

In the same issue of the **Federal Register**, we concurrently published a notice of proposed rulemaking, Notice No. 95 (74 FR 29433), to request comments on the regulatory amendments contained in the temporary rule. The preamble to the temporary regulations explained the proposed regulations. As originally published, comments on Notice No. 95 were due on August 21, 2009. (On July 29, 2009, we published corrections to the temporary rule in T.D. TTB–80 at 74 FR 37551.)

On August 19, 2009, TTB received a letter from a law firm representing the John Middleton Co., Philip Morris USA Inc., and U.S. Smokeless Tobacco Manufacturing Co. LLC, requesting an extension of the comment period for Notice No. 95. In the letter, the requester noted the temporary rule's immediate effective date and the fact that TTB issued the temporary rule and the related notice of proposed rulemaking just before the annual TTB Expo, which was attended by many company officials. The letter stated these events gave the companies ''little time to digest the implications of the temporary rule prior to the Expo * * *.'' Since returning from the Expo, the companies have found ''the process of identifying all activity within the factories that might have implications for processed tobacco'' to be ''extensive and time consuming.''

The letter also noted that the TTB temporary rule was issued on the same day as the enactment of the Family Smoking Prevention and Tobacco Control Act, which provides for regulation of tobacco products by the Food and Drug Administration. ''Thus,'' the letter states, ''key personnel within the Companies and other industry entities were involved in evaluation of this legislation and identification of its implications for their operations.'' The letter additionally noted that the comment period on the proposed rule coincided with the summer vacation season when company officials are most likely to be away from their offices.

Given the factors cited above, TTB agrees that the comment period for Notice No. 95 should be extended by an additional 60 days. Therefore, comments on Notice No. 95 are now due on October 20, 2009.

Drafting Information

Michael Hoover of the Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, drafted this document.

Signed: August 20, 2009.

Cheri D. Mitchell,

Acting Administrator.

[FR Doc. E9–20404 Filed 8–24–09; 8:45 am]

BILLING CODE 4810–31–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2009–0462, FRL–8949–1]

Approval and Promulgation of Implementation Plans; New York Reasonably Available Control Technology and Reasonably Available Control Measures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing action on portions of a State Implementation Plan revision submitted by New York State that are intended to meet some Clean Air Act requirements for attaining the 0.08 parts per million 8-hour ozone national ambient air quality standards. EPA is proposing to disapprove the reasonably available control technology requirement as it relates to the entire State of New York, including the New York portion of the New York-Northern New Jersey-Long Island, NY–NJ–CT and the Poughkeepsie 8-hour ozone moderate nonattainment areas.

In addition, EPA is proposing to disapprove the reasonably available control measure analysis as it relates to the New York portion of the New York-Northern New Jersey-Long Island, NY–NJ–CT 8-hour ozone moderate nonattainment area.

DATES: Comments must be received on or before September 24, 2009.

ADDRESSES: Submit your comments, identified by Docket Number EPA–R02–OAR–2009–0462, by one of the following methods:

- *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *E-mail: Werner.Raymond@epa.gov*.
- *Fax:* 212–637–3901.
- *Mail:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.
- *Hand Delivery:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

Instructions: Direct your comments to Docket No. EPA–R02–OAR–2009–0462. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which

means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters or any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866. EPA requests, if at all possible, that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kirk Wieber (*wieber.kirk@epa.gov*), Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION:

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I. What Action Is EPA Proposing?

The Environmental Protection Agency (EPA) has reviewed elements of New York's comprehensive State Implementation Plan (SIP) revisions for the 0.08 parts per million (ppm) 8-hour ozone national ambient air quality standards (NAAQS or standard) [1] along with other related Clean Air Act (Act) requirements necessary to ensure attainment of the standard. The EPA is proposing to disapprove the reasonably available control measure (RACM) analysis and New York's efforts to meet the reasonably available control technology (RACT) requirement.

New York provided additional information on July 31, 2009, which supplements the state-wide 2002 base year emissions inventory, the ozone projection emission inventory, the conformity budgets, the reasonable further progress (RFP) plan, and the contingency measures. EPA is reviewing this information and will make a decision in the near future as to whether New York has satisfied the requirements of the Act. EPA is also continuing to review the attainment demonstration, the new source review provisions and New York's request for a voluntary reclassification of the New York-Northern New Jersey-Long Island, NY–NJ–CT 8-hour ozone nonattainment area from ''moderate'' to ''serious'' and plans to address the other components of the SIP submittals in one or more separate proposals in the near future.

EPA's analysis and findings are discussed in this proposed rulemaking and a more detailed discussion is contained in the Technical Support Document for this Proposal, which is available online at *http://www.regulations.gov*, Docket number EPA–R02–OAR–2009–0462.

II. Background Information

A. What Are the Act Requirements for a Moderate 8-hr Ozone Nonattainment Area?

1. History and Time Frame for the State's Attainment Demonstration SIP

In 1997, EPA revised the health-based NAAQS for ozone, setting it at 0.08 ppm averaged over an 8-hour period. EPA set the 8-hour ozone standard based on scientific evidence demonstrating that ozone causes adverse health effects at lower ozone concentrations and over longer periods of time than was understood when the pre-existing 1-hour ozone standard was set. EPA determined that the 8-hour standard would be more protective of human health, especially with regard to children and adults who are active outdoors, and individuals with a pre-existing respiratory disease, such as asthma.

On April 30, 2004 (69 FR 23951), EPA finalized its attainment/nonattainment designations for areas across the country with respect to the 8-hour ozone standard. These actions became effective on June 15, 2004. The three 8-hour ozone moderate nonattainment areas located in New York State are, the New York-Northern New Jersey-Long Island, NY–NJ–CT nonattainment area, the Poughkeepsie nonattainment area; and the Jefferson County nonattainment area. The New York portion of the New York-Northern New Jersey-Long Island, NY–NJ–CT nonattainment area is composed of the five boroughs of New York City and the surrounding counties of Nassau, Suffolk, Westchester and Rockland. This is collectively referred to as the New York City Metropolitan Area or NYMA. The Poughkeepsie nonattainment area is composed of Dutchess, Orange and Putnam counties. On March 25, 2008 (73 FR 15672) EPA determined that Jefferson County attained the 8-hour ozone standard.

These designations triggered the Act's requirements under section 182(b) for moderate nonattainment areas, including a requirement to submit a demonstration of attainment. To assist states in meeting the Act's requirements

[1] Unless otherwise specifically noted in the action, references to the 8-hour ozone standard are to the 0.08 ppm ozone standard promulgated in 1997.

for ozone, EPA released an 8-hour ozone implementation rule in two Phases. EPA's Phase 1 8-hour ozone implementation rule, published on April 30, 2004 (69 FR 23951) and referred to as the Phase 1 Rule, specifies that states must submit these attainment demonstrations to EPA by no later than three years from the effective date of designation, that is, submit them by June 15, 2007.

2. Moderate Area Requirements

On November 9, 2005, EPA published Phase 2 of the 8-hour ozone implementation rule (70 FR 71612) and referred to as the Phase 2 Rule, which addressed the control obligations that apply to areas designated nonattainment for the 8-hour NAAQS. Among other things, the Phase 1 and Phase 2 Rules outline the SIP requirements and deadlines for various requirements in areas designated as moderate nonattainment. For such areas, RACT plans were due by September 2006 (40 CFR 51.912(a)(2)). The rules further require that modeling and attainment demonstrations, RFP plans, RACM analysis, projection year emission inventories, motor vehicle emissions budgets and contingency measures were all due by June 15, 2007 (40 CFR 51.908(a), and (c)).

III. What Was Included in New York's SIP Submittals?

After completing the appropriate public notice and comment procedures, New York made a series of submittals in order to address the Act's 8-hour ozone attainment requirements previously described in Section II.A.2. On September 1, 2006, New York submitted its state-wide 8-hour ozone RACT SIP, which included a determination that many of the RACT rules currently contained in its SIP meet the RACT obligation for the 8-hour standard. On February 8, 2008, New York submitted two comprehensive 8-hour ozone SIPs—one for the New York portion of the New York-Northern New Jersey-Long Island, NY–NJ–CT nonattainment area, entitled, ''New York SIP for Ozone—Attainment Demonstration for New York Metro Area'' and one for the Poughkeepsie nonattainment area, entitled, ''New York SIP for Ozone—Attainment Demonstration for Poughkeepsie, NY Area''. The submittals included the 2002 base year emissions inventory, projection year emissions, attainment demonstrations, RFP plans, RACM analysis, RACT analysis, contingency measures, new source review and on-road motor vehicle emission budgets. These SIP revisions were subject to notice and comment by the public and the State addressed the comments received on the proposed SIPs before adopting the plans and submitting them for EPA review and rulemaking action.

On July 31, 2009, New York provided supplemental information intended to clarify its February 8, 2008 ozone SIP submittals. EPA is reviewing this information and will make a decision in the near future as to whether New York has satisfied the requirements of the Act.

With respect to the Poughkeepsie area, EPA is in the process of evaluating its air quality monitoring data. It appears that the Poughkeepsie area may have attained the 8-hour ozone standard. If this turns out to be the case, consistent with 40 CFR 51.918, certain requirements of subpart 2 of part D of title I of the Act, namely reasonable further progress (including projection year inventories), attainment demonstration, RACM analysis and contingency measures, may no longer apply to the Poughkeepsie area. Therefore, EPA is not taking action at this time on these SIP elements for the Poughkeepsie area that are contained in the 8-hour ozone SIP that was submitted to EPA on February 8, 2008. However, EPA is taking action on the RACT SIP for the Poughkeepsie Area.

In addition to the previously mentioned 8-hour ozone SIP submittals, on April 4, 2008, New York submitted to EPA a request for a voluntary reclassification of the New York-Northern New Jersey-Long Island, NY–NJ–CT 8-hour ozone nonattainment area from ''moderate'' to ''serious'' pursuant to section 181(b)(3) of the Act. At this time, EPA is continuing to review New York's request for a voluntary reclassification of the New York-Northern New Jersey-Long Island, NY–NJ–CT 8-hour ozone nonattainment area and plans to address New York's request in a separate proposed action in the near future.

IV. EPA's Review and Technical Information

A. Reasonably Available Control Technology (RACT) for Stationary Sources

1. What Are the Act Requirements?

Sections 172(c)(1), 182(b)(2) and 182(f) of the Act require nonattainment areas that are designated as moderate or above for ozone to adopt RACT. Section 184(b)(1) of the Act requires that these RACT provisions apply to all areas (such as the entire State of New York) that are located in an Ozone Transport Region. In accordance with section 182(b), New York must, at a minimum, adopt RACT level controls for sources covered by a Control Techniques Guidelines (CTG) document and for any non-CTG sources that are major according to the threshold for the area. EPA has defined RACT as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.

In EPA's Phase 2 Rule to implement the 8-hour ozone standard, Section IV.G discusses the RACT requirements. It states, in part, where a RACT SIP is required, SIPs implementing the 8-hour standard generally must assure that RACT is met, either through a certification that previously required RACT controls represent RACT for 8-hour implementation purposes or, where necessary, through a new RACT determination. The counties in the NYMA (and part of Orange County) were previously classified under the 1-hour ozone NAAQS as severe, requiring RACT, while the remaining counties in the State were subject to RACT as part of a moderate classification or as part of the Ozone Transport Region. In the NYMA and a portion of Orange County, the previous severe classification resulted in a requirement for major sources to be defined as those having emissions of 25 tons per year or more for either VOC or NOx.

In areas classified as moderate or areas located in the Ozone Transport Region (which includes all of New York State) under the 8-hour ozone standard, the definition for major sources in New York would have been 50 tons per year for VOC and 100 tons per year for NOx. New York chose to retain the 1-hour ozone plan emission threshold of 25 tons per year in the NYMA and a portion of Orange County for purposes of the RACT analysis which results in a more stringent evaluation of RACT. The rest of the State follows the moderate major source definition as previously mentioned.

2. How Did New York Perform Its RACT Analysis?

New York submitted a state-wide RACT assessment in a SIP revision dated September 1, 2006. In that submittal, New York evaluated its existing RACT regulations which were adopted to meet the 1-hour ozone standard, to ascertain whether the same regulations constitute RACT for the new 8-hour ozone NAAQS. New York's 8-hour ozone RACT SIP submittal is based on the determination that RACT has been met either through a certification that previously required RACT controls for the 1-hour ozone standard represent

RACT for 8-hour ozone implementation purposes or, where necessary, through a new RACT reevaluation for certain regulations or sources. In making its 8-hour ozone RACT determination, New York relied on EPA's RACT guidance (''Cost-Effective NO_X RACT'' March 16, 1994), EPA's RACT Question and Answer document (May 18, 2006) and New York's Air Guide 20, ''Economic and Technical Analysis for Reasonably Available Control Technology'' (January 24, 1996). Accordingly, the basic framework for New York's RACT SIP determination is described below:

- Identify all source categories covered by Control Technique Guidelines (CTG) and Alternative Control Technique (ACT) documents.
- Identify applicable regulations that implement RACT.
- Certify that the existing level of controls for the 1-hour ozone standard equals RACT under the 8-hour ozone standard in certain cases.
- Declare that sources covered by a CTG and ACT do not exist within the state and/or that RACT is not applicable in certain cases.
- Identify and evaluate applicability of RACT to individual sources not covered by state-wide regulation.
- Identify potential RACT revisions.

3. What Were the Results of New York's Analysis of RACT for Stationary Sources?

New York certified that all RACT regulations with effective dates from 1996 to the date when the RACT analysis was performed (2006) are RACT for the 8-hour ozone NAAQS because the associated economic feasibility calculations are consistent with the ten-year amortization period for control equipment in typical RACT analyses. Additionally, based on the review of current technologies,[2] New York found no data indicating that the existing levels of control for these source categories are no longer RACT. To determine RACT applicability for measures with an effective date prior to 1996, New York performed a re-evaluation by using EPA's guidance and comparing control measures to those currently enacted by other 1-hour ozone nonattainment areas.[3]

a. CTGs and ACTs

New York reviewed its existing RACT regulations adopted under the 1-hour ozone standard to identify sources categories covered by EPA's CTG and ACT documents. New York's RACT SIP submittal lists the CTG and ACT documents and corresponding State RACT regulations that cover the CTG and ACT sources included in New York's emission inventory. For major non-CTG sources, the provisions in Title 6 of the New York Codes, Rules and Regulations (6 NYCRR) Part 212 ''General Process Emission Sources'' regulate RACT compliance.

New York has implemented RACT controls state-wide for the 53 CTGs and ACTs that EPA has issued as of September 2006 to meet the requirements of the Act. Table 5 lists the RACT controls that have been promulgated in 6NYCRR and the corresponding EPA SIP approval dates.

TABLE 5—NEW YORK ADOPTED RACT REGULATIONS

NY regulation	Title	EPA approval date
Part 205	Architectural and Industrial Maintenance Coatings	12/13/04, 69 FR 72118.
Part 211	General Prohibitions	11/27/98, 63 FR 65559.
Part 212	General Process Emission Sources	9/25/01, 66 FR 48961.
Part 216	Iron and/or Steel Processes	7/20/06, 71 FR 41163.
Part 220	Portland Cement Plants	Submitted but not approved into the SIP.
Part 223	Petroleum Refineries	7/19/85, 50 FR 29382.
Part 224	Sulfuric and Nitric Acid Plants	7/19/85, 50 FR 29382.
Part 226	Solvent Metal Cleaning Processes	1/23/04, 69 FR 3240.
Part 227–2	Reasonably Available Control Technology (RACT) for Oxides of Nitrogen (NO_X)	1/13/05, 70 FR 2358.
Part 228	Surface Coating Processes	1/23/04, 69 FR 3240.
Part 229	Petroleum and Volatile Organic Liquid Storage and Transfer	12/23/97, 62 FR 67006.
Part 230	Gasoline Dispensing Sites and Transport Vehicles	4/30/98, 63 FR 23668.
Part 232	Dry Cleaning	6/17/85, 50 FR 25079.
Part 233	Pharmaceutical and Cosmetic Processes	12/23/97, 62 FR 67006.
Part 234	Graphic Arts	12/23/97, 62 FR 67006.
Part 236	Synthetic Organic Chemical Manufacturing Facility Component Leaks	7/27/93, 58 FR 40059

The New York RACT SIP submittal contains a table (*see* Table 2—RACT Source Categories) listing all the CTG and ACT categories (53 categories in total) and the corresponding State regulations that address the requirements. EPA had previously approved and incorporated into the SIP all but Part 220 of the State regulations.

For many source categories, the existing New York rules go beyond the recommendations contained in the CTG/ACT documents in terms of more stringent emission limits and lower thresholds of applicability. New York identified some categories where controls may be more stringent than the recommended levels contained in the CTG/ACT documents and these are identified in Section A.3.d below. Based on the September 1, 2006 RACT evaluation, New York states that the existing RACT rules for the remaining CTG and ACT categories met the RACT requirement for the 8-hour ozone NAAQS implementation purposes.

b. Source Categories not Applicable in New York State

New York previously certified to the satisfaction of EPA (40 CFR 52.1683) that no sources are located in the nonattainment area of the State that are covered by the following CTGs: (1) Natural Gas/Gasoline Processing Plants; (2) Air Oxidation Processes at Synthetic Organic Chemical Manufacturing Industries; and (3) Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins. New York has reviewed its emission inventory and

[2] Information available at EPA's technology transfer network: *http://cfpubl.epa.gov/rblclhtm/bl02.cfm.*

[3] Serious and Severe Ozone Nonattainment areas: Information on emissions, control measures adopted or planned and other available control measures. EPA, November 1999.

emission statements as required under 6 NYCRR 202–2, entitled, ''Emission Statement'' for stationary sources and reaffirmed that either there are no sources within New York State or that there are no sources within New York State that exceed the applicability thresholds for the above CTGs.

c. Source-Specific RACT Determinations

The 8-hour ozone RACT analyses must address source-specific RACT as it applies to a single regulated entity. The source-specific RACT determination applies to sources that have obtained facility-specific emission limit or an alternative emission limit, i.e., a variance. A case-by-case RACT analysis may also be required for sources that are not in an established source category covered by an existing state regulation or addressed by a CTG. New York's ''Guide for the Economic and Technical Analysis for Reasonably Available Control Technology'' outlines the process and conditions for granting source-specific RACT variances. Under the Act, these individually source-specific RACT determinations need to be submitted by the State as a SIP revision and EPA must approve it. Therefore, New York included in Appendix D of its September 1, 2006 RACT SIP submittal a listing of VOC and NO_X source facilities that are subject to RACT source-specific SIP revision under the 1-hour ozone SIP and corresponding emission limits or regulations governing the variances. Consistent with the Act, on September 16, 2008, New York submitted to EPA a SIP revision that included most of the source-specific RACT revisions identified in Appendix D of the RACT SIP submittal. EPA is performing its technical review of that submittal and will take separate rulemaking actions in the near future for each of the source-specific determinations.

d. Additional Control Measures Needed for Attainment

In some instances, New York has adopted regulations with emission limits that are more stringent than those recommended by the CTGs and ACTs. For example, Part 205, ''Architectural and Industrial Maintenance Coatings,'' Part 226, ''Solvent Metal Cleaning Operations,'' Part 228, ''Surface Coating Processes'' have each been adopted by the State with more stringent limits or applicability than what was recommended by the corresponding CTGs.

In addition, included in New York's February 8, 2008 8-hour Ozone SIP was a list of additional control measures that are currently under development by the State (Section 9, ''New Stationary Source Measures'' of New York's SIP). The State committed to adopt regulations applicable to the following source categories: Adhesives and Sealants, Consumer Products, Graphic Arts, Asphalt Formulation, Asphalt Paving Production, Portland Cement Plants, Glass Manufacturing, High Electric Demand Day, Distributed Generation, MACT and ICI Boilers RACT. In letters dated January 27, 2009 and June 23, 2009, New York revised its schedules and commitments to adopt the new or revised regulations relevant to most of these categories until later dates.

4. What Is EPA's Evaluation?

New York submitted a state-wide RACT assessment on September 1, 2006 and supplemented the RACT assessment with additional information on September 16, 2008 and February 8, 2008 for the NYMA. Collectively, the RACT submission from New York consists of: (1) A certification that previously adopted RACT controls in New York's SIP for various source categories that were approved by EPA under the 1-hour ozone NAAQS are based on the currently available technically and economically feasible controls, and that they continue to represent RACT for the 8-hour ozone implementation purposes; (2) a number of source specific RACT determinations; (3) a negative declaration that for certain CTGs and/or ACTs there are no sources within New York State or that there are no sources above the applicability thresholds; and (4) a commitment to adopt new or more stringent regulations that represent RACT control levels for specific source categories.

EPA has reviewed the State's RACT analysis and has determined that the state-wide RACT analysis submitted on September 1, 2006 and supplemented on September 16, 2008 and February 8, 2008 for the NYMA, does not adequately address the RACT requirement consistent with sections 172(c)(1), 182(b)(2) and 182(f) of the Act, as interpreted in EPA's regulations, guidance and policies. EPA's determination is based on the fact that New York has:

- Not adopted all RACT measures identified by the State as part of New York's RACT SIP submitted on September 1, 2006 and supplemented on September 16, 2008 and February 8, 2008;
- Missed commitments to adopt all RACT measures according to schedules contained in New York's RACT SIP submitted on September 1, 2006 and supplemented on September 16, 2008 and February 8, 2008. The February 8, 2008 SIP submittal included a schedule that identified that all new or revised control measures would be adopted by December 2008. (In a letter dated June 23, 2009, New York has subsequently revised that schedule and committed to propose all of those measures by September 2009 and adopt them by March 2010);
- Not adopted the necessary control measures to expedite attainment of the 8-hour ozone standard consistent with EPA's policy on for a voluntary reclassification request (see 70 FR 71631).

Therefore, EPA is proposing to disapprove New York's state-wide RACT SIP, which includes the RACT assessment for the NYMA. EPA encourages New York to accelerate its rulemaking process and adopt control measures prior to the commitment date of March 2010 for the RACT measures that have been identified and committed to by New York in order to achieve RFP and attainment of the 8-hour ozone standard as expeditiously as practicable and provide for cleaner air for the public.

B. Reasonably Available Control Measures (RACM) Analysis

1. What Are the Act Requirements?

Pursuant to section 172(c)(1) of the Act, states are required to implement all Reasonably Available Control Measures (RACM) as expeditiously as practicable. Specifically, section 172(c)(1) states: ''In general—Such plan provisions shall provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology) and shall provide for attainment of the national primary ambient air quality standards.''

Furthermore, in EPA's Phase 2 Rule, EPA describes how states must include with their attainment demonstration a RACM analysis (70 FR 71659). The purpose of the RACM analysis is to determine whether or not reasonably available control measures exist that would advance the attainment date for nonattainment areas. Control measures that would advance the attainment date are considered RACM and must be included in the SIP. RACM are necessary to ensure that the attainment date is achieved ''as expeditiously as practicable.''

RACM is defined by the EPA as any potential control measure for application to point, area, on-road and

non-road emission source categories that meets the following criteria:

- The control measure is technologically feasible
- The control measure is economically feasible
- The control measure does not cause ''substantial widespread and long-term adverse impacts''
- The control measure is not ''absurd, unenforceable, or impracticable''
- The control measure can advance the attainment date by at least one year.

RACM differs from RACT in that RACM applies to all source categories and RACT applies to only stationary sources.

2. How Did New York Perform Its RACM Analysis?

The Ozone Transport Commission staff and member States, including New York, formed and participated in several workgroups to identify and evaluate candidate control measures that could be used to demonstrate attainment of the 8-hour ozone NAAQS. Initially, the workgroups compiled and reviewed a list of approximately 1,000 candidate control measures. These control measures were identified through published sources such as EPA's CTGs, National Association of Clean Air Agencies (NACAA) ''Menu of Options'' documents, the AirControlNET database, emission control initiatives in member States as well as other States including California, state/regional consultations, and stakeholder input. The workgroups evaluated data regarding emissions benefits, cost-effectiveness (economic feasibility) and implementation issues (technological feasibility) to develop a preliminary list of 30 candidate control measures to be considered for more detailed analysis. These measures were selected to focus on the pollutants and source categories that are thought to be the most effective in reducing ozone levels in the Northeastern and Mid-Atlantic regions. The document ''Identification and Evaluation of Candidate Control Measures—Final Technical Support Document,'' dated February 28, 2007, is included in New York's February 8, 2008 ozone SIP revisions as an Appendix as supporting documentation of the process and product of the workgroups.

Based on the analysis conducted by the workgroups, the Commissioners of the Ozone Transport Commission recommended that states consider reductions from the following source categories: Consumer Products, Portable Fuel Containers, Adhesives and Sealants Applications, Diesel Engine Chip Reflash, Cutback and Emulsified Asphalt Paving, Asphalt Production Plants, Cement Kilns, Glass Furnaces, Industrial, Commercial and Institutional (ICI) Boilers, Regional Fuels.

3. What Were the Results of the RACM Analysis?

With the exception of Diesel Engine Chip Reflash and Regional Fuels, New York is developing new or revised regulations for all of the source categories recommended by the Commissioners of the Ozone Transport Commission that will provide for the implementation of all RACM and attainment of the 8-hour ozone standard as expeditiously as practicable. New York State determined that these measures represent RACM as they are reasonably available and can be expected to advance the attainment date and contribute to RFP. These measures, referred to as ''Beyond On The Way'' measures in the attainment modeling scenarios for the New York-Northern New Jersey-Long Island, NY–NJ–CT 8-hour ozone nonattainment area, are anticipated to provide an additional 1 to 2 parts per billion reduction benefit in the projected 2009 ozone design values beyond what was projected for ''On The Books/On the Way'' measures as detailed in the attainment modeling section of New York's February 8, 2008 8-hour ozone SIP submittal.

4. What Is EPA's Evaluation?

The State is proceeding with developing several of the additional measures identified by the Ozone Transport Commission as part of its RACT and RACM control program. EPA has reviewed New York's RACM analysis and while EPA agrees with New York that there are no RACM that can be adopted in time to advance the moderate area attainment date of 2010 for the NYMA, EPA is proposing to disapprove New York's RACM analysis because New York has not adopted all RACM identified and committed to by the State as reasonably available for assisting to reach attainment. EPA's concerns with New York's RACM analysis are the same as the concerns with New York's RACT SIP discussed earlier.

With respect to the adoption of control measures, EPA encourages New York to accelerate its rulemaking process and adopt the RACM that have been identified and committed to by New York in order to achieve RFP and attainment of the 8-hour ozone standard as expeditiously as practicable and provide for cleaner air for the public.

V. What Are EPA's Conclusions?

EPA is proposing to disapprove the moderate area RACM analysis for the New York portion of the New York–Northern New Jersey–Long Island, NY–NJ–CT 8-hour ozone moderate nonattainment area as presented in the February 8, 2008, ''New York SIP for Ozone—Attainment Demonstration for New York Metro Area.''

EPA is also proposing to disapprove the September 1, 2006 New York RACT assessment SIP submittal, supplemented on February 8, 2008 and September 16, 2008, as is applies to the entire State and to the New York portion of the New York-Northern New Jersey-Long Island, NY–NJ–CT and the Poughkeepsie 8-hour ozone moderate nonattainment areas.

VI. What Are the Consequences if EPA Finalizes the Proposed Disapproval?

If New York does not address the issues discussed in this proposed rule, and if EPA were to finalize this proposed disapproval, there could be the following consequences. The Act provides for the imposition of sanctions and the promulgation of a federal implementation plan (FIP) if states fail to correct any deficiencies identified by EPA in a final disapproval action within certain timeframes.

A. What Are the Act's Provisions for Sanctions?

If EPA disapproves a required SIP submittal or component of a SIP submittal, section 179(a) provides for the imposition of sanctions unless the deficiency is corrected within 18 months of the final rulemaking of disapproval. The first sanction would apply 18 months after EPA disapproves the SIP submittal if a state fails to make the required submittal that EPA proposes to fully or conditionally approve within that time. Under EPA's sanctions regulations, 40 CFR 52.31, the first sanction would be 2:1 offsets for sources subject to the new source review requirements under section 173 of the Act. If the state has still failed to submit a SIP for which EPA proposes full or conditional approval 6 months after the first sanction is imposed, the second sanction will apply. The second sanction is a limitation on the receipt of federal highway funds. EPA also has authority under section 110(m) to sanction a broader area.

B. What Federal Implementation Plan Provisions Apply If a State Fails To Submit an Approvable Plan?

In addition to sanctions, if EPA finds that a state failed to submit the required SIP revision or disapproves the required

SIP revision, or a portion thereof, EPA must promulgate a FIP no later than 2 years from the date of the finding if the deficiency has not been corrected.

VII. What Future Actions/Options Are Available for New York Regarding an Approvable 8-Hour Ozone SIP?

As discussed in this proposed rulemaking action, EPA has proposed certain determinations on some SIP components included in New York's 8-hour Ozone SIP submittals. EPA's proposed determinations are based on EPA's technical evaluation of the submittals and take into consideration the appropriate requirements pursuant to the Act, EPA rules and regulations, guidance and policy. EPA makes the following suggestions for correcting the identified deficiencies and strengthening New York's SIP.

Adoption of Control Measures

New York included in its 8-hour ozone SIP submittals an enforceable commitment to adopt specific measures within a specified timeframe such that the emission reductions would be achieved in time to assist in reducing ozone precursors for RFP and to achieve attainment as expeditiously as practicable. In this rulemaking, EPA is proposing to disapprove New York's RACT and RACM SIP submittal as they relate to a commitment to adopt and implement those additional measures. EPA encourages New York to accelerate its rulemaking process and adopt control measures prior to the commitment date of March 2010 for the RACT and RACM measures that have been identified and committed to by New York in order to achieve RFP and attainment of the 8-hour ozone standard as expeditiously as practicable, provide for cleaner air for the public and meet Clean Air Act requirements.

VIII. What Is the Status of New York's Reclassification Request?

EPA is in the process of evaluating New York's April 4, 2008 request to reclassify the New York–Northern New Jersey–Long Island, NY–NJ–CT 8-hour ozone nonattainment area from moderate to serious. Because this is a multi-state nonattainment area, EPA is evaluating its options in how best to proceed with addressing New York's request. Recently, EPA proposed to disapprove the attainment demonstrations submitted by New Jersey and Connecticut (74 FR 21578 and 74 FR 21568, respectively) for the remaining portions that make up the entire New York–Northern New Jersey–Long Island, NY–NJ–CT 8-hour ozone nonattainment area.

While New York included in its February 8, 2008 8-hour ozone SIP submittal SIP elements consistent with a reclassification or serious classification schedule for achieving attainment (*i.e.,* RFP plan for 2011, 2012 and attainment demonstration for 2013), EPA is not acting on any of those elements that go beyond the Act requirements associated with a moderate area classification. EPA will address New York's reclassification request and the other relevant SIP elements in one or more separate proposed actions in the near future.

IX. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L.104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Oxides of Nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 14, 2009.

Barbara A. Finazzo,

Acting Regional Administrator, Region 2.

[FR Doc. E9–20394 Filed 8–24–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2008–0697; FRL–8948–9]

RIN 2060–AP08

Revisions to Test Method for Determining Stack Gas Velocity Taking Into Account Velocity Decay Near the Stack Walls

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revise the voluntary test method for determining stack gas velocity taking into account the velocity decay near the stack or duct walls. When the method was originally developed, it addressed only sources where the flow measurements were made in locations with circular cross-sections. The proposed revised test method addresses flow measurement locations with both circular and rectangular cross-sections. The proposed revisions also include changes that increase the accuracy of the method and simplify its application. The primary users of the proposed method are likely to be owners and operators of utility units subject to the Acid Rain

Program under Title IV of the Clean Air Act; and certain large electric generating units and large non-electric generating units that are subject to the nitrogen oxides (NO_X) state implementation plan (SIP) call under Title I of the Clean Air Act. These sources use volumetric stack flow rate monitors in order to measure sulfur dioxide (SO_2) and NO_X mass emissions and unit heat input, and must conduct periodic relative accuracy test audits (RATAs) of the flow rate monitors at these units.

DATES: Comments must be received on or before October 26, 2009.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–HQ–OAR–2008–0697, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-Docket@epa.gov*, Attention Docket ID No. EPA–HQ–OAR–2008–0697
- *Fax:* 202–566–9744, Attention Docket ID. No. EPA–HQ–OAR–2008–0697.
- *Mail:* Air and Radiation Docket and Information Center, Environmental Protection Agency, Mail Code: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. EPA–HQ–OAR–2008–0697. Please include a total of two copies.
- *Hand Delivery:* Deliver your comments to: EPA Docket Center, 1301 Constitution Ave., NW., Room 3334, Washington, DC 20460. Attention Docket ID No. EPA–HQ–OAR–2008–0697. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions. Direct your comments to Docket ID No. EPA–HQ–OAR–2008–0697. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket. All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Jason M. DeWees, US EPA, Office of Air Quality Planning and Standards, Air Quality Assessment Division, Measurement Technology Group (E143–02), Research Triangle Park, NC 27711; telephone (919) 541–9724; fax number (919) 541–0516; e-mail address *dewees.jason@epa.gov*.

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I. Does This Action Apply to Me?

Entities potentially affected by this action include those listed in Table 1.

TABLE 1—ENTITIES POTENTIALLY AFFECTED BY THIS ACTION

Category	NAICS [a]	Examples of regulated entities
Industry	221112	Fossil fuel-fired electric utility steam generating units.
Federal government	[b] 221122	Fossil fuel-fired electric utility steam generating units owned by the Federal government.
State/local governments	[b] 221122	Fossil fuel-fired electric utility steam generating units owned by municipalities.
Tribal governments	921150	Fossil fuel-fired electric utility steam generating units in Indian country.

[a] North American Industry Classification System.
[b] Federal, State, or local government-owned and operated establishments are classified according to the activity in which they are engaged.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this proposed rule. If you have any questions regarding the applicability of this proposed rule to a particular entity, consult either the air permit authority for the entity or your

EPA regional representative as listed in 40 CFR 63.13.

II. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *http://www.regulations.gov* or e-mail. Clearly mark any of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

III. Where Can I Obtain a Copy of This Action?

In addition to being available in the docket, an electronic copy of this proposed rule is also available on the World Wide Web through the Technology Transfer Network (TTN). Following the Administrator's signature, a copy of this proposed rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg*. The TTN provides information and technology exchange in various areas of air pollution control.

IV. Background

In 1999, EPA promulgated three new stack flow test methods (64 FR 26484, May 14, 1999) designed to provide additional measurement options and increased accuracy by accounting for velocity decay at the wall and yaw and pitch angled flow. One of the methods, Determination of Stack Gas Velocity Taking Into Account Velocity Decay Near The Stack Wall (Method 2H), was intended to address an inherent bias when stack flow is measured in accordance with the equal area traverse procedure in Reference Method 1. The traverse point selection procedure in Method 1 provided a reasonable assessment of the average flow in the central portion of the stack, but it did not account for viscous shear that causes the velocity to drop off significantly near the stack walls. Method 2H allowed sources to make near wall measurements in order to calculate a wall effects adjustment factor (WAF) to correct the test method flow to account for the velocity decay near the stack wall. Unfortunately, Method 2H could only be used on circular stacks. At that time, the effort focused on developing and testing a method for applications where flow is measured in stacks with circular cross-sections, which represented the vast majority of the affected sources. The procedures did not address flow measurements in rectangular ducts even though the same viscous shear wall effect occurred in those locations, and the related bias was even more pronounced due to the geometry.

In 2003, EPA released Conditional Test Method 041 (CTM–041) based on a method developed by Electric Power Research Institute (EPRI) to address wall effects when flow is measured in rectangular ducts. In addition to filling a void in the flow reference methods, CTM–041 included a number of improvements over EPA Reference Method 2H. Since its release, the method has been successfully used by many sources through a petition process.

V. Why Is EPA Revising Method 2H?

EPA proposes to revise Method 2H to incorporate the measurement and calculation procedures included in CTM–041 for rectangular duct flow measurement locations. EPA is proposing to make this change based on the results of the field-testing performed by EPRI during the method's initial development and the successful application of these procedures at many sources since the CTM–041 was released. Incorporating these procedures will eliminate the need for the petition process, which owner or operators of rectangular duct sources seeking to address wall effects related bias must currently use.

The proposed revisions harmonize the procedures for circular and rectangular measurement locations and extend the improvements in CTM–041 to circular stacks. The proposed revised method does not require testing at multiple loads since there is no apparent load or flow rate levels (Reynolds Number) related effect. Under the proposed revisions, WAF testing does not need to be coupled with a Relative Accuracy Test Audit (RATA), allowing some sources to avoid the potential difficulties and problems associated with trying to measure wall effects using Methods 2F or 2G. Since the factors that significantly influence wall effects will not change appreciably over time, a WAF can continue to be used unless major modifications are made to the duct or stack and the RATA continues to include the same number of traverse points on which the WAF was based.

The logarithmic-overlap law has long been used to model flow near walls. As expected, the logarithmic-overlap law demonstrated excellent correlation with wall effects data from both agency and industry studies. The proposed revised method harnesses the accuracy of the logarithmic-overlap law in two ways. First, the proposed method includes an option where the logarithmic-overlap law is used to categorize near-wall velocities based on a limited number of measurements. This proposed approach solves a problem in the current method, where a full WAF assessment cannot be made if the ports protrude into the stack.

Secondly, the logarithmic-overlap law is also used, along with a few conservative assumptions, to develop stack specific default WAF values. This proposed option yields conservative WAF values that, unlike the ''one-size-fits-all'' defaults in the current version of Method 2H, take into consideration stack or duct geometry and velocity profile issues. The stack specific default factors do not offer sources the full velocity correction of the full WAF assessment option, but the stack specific default factors option is a reasonable approach for applications where additional measurements would be difficult.

Another proposed change to the method is the way the WAFs are applied under the revised method. Presently, the adjustment is applied

only to the RATA flow values. Under the revised method, the WAF is applied as an adjustment to the cross-sectional area value used both to calculate the continuous emissions monitors and reference method flows.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866—Regulatory Planning and Reviews

This proposed action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is, therefore, not subject to review under the Executive Order.

B. Paperwork Reduction Act

This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). The proposed amendments do not contain any reporting or recordkeeping requirements.

C. Regulatory Flexibility Act

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impact of this proposed rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action proposes to revise the test method for velocity decay at the stack or duct wall in 40 CFR part 60, Appendix A–2. The use of this method is a voluntary addition to the required volumetric flow rate methods. Therefore, this action does not impose any requirements on small entities. The small entities affected by this proposed rule are small businesses, small governmental jurisdictions and small non-profits that operate facilities that currently voluntarily choose to use Method 2H. EPA anticipates that the proposed revised method will only be used by small entities if the use of the revised method results in overall cost savings due to the voluntary nature of the method.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. The action imposes no enforceable duty on any State, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action proposes to revise the test method for velocity decay at the stack or duct wall in 40 CFR part 60. The use of this method is a voluntary addition to the required volumetric flow rate methods.

E. Executive Order 13132—Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Because this method is an alternative method, its use is voluntary.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comments on this proposed rule from State and local officials.

F. Executive Order 13175—Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). In this action, EPA is simply proposing to revise an existing, optional test method. Thus, Executive Order 13175 does not apply to this rule.

EPA specifically solicits additional comment on this proposed action from tribal officials.

G. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 29885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards

bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

EPA is not proposing a new test method in this rulemaking but is revising an existing optional method that is used in conjunction with methods already mandated for evaluating compliance with current emission standards. EPA is not aware of any voluntary consensus standards that would address the specific need. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898—Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment.

This action only revises an existing optional method that is used in conjunction with methods already mandated for evaluating compliance with current emission standards.

List of Subjects in 40 CFR Part 60

Environmental protection, Air pollution control, Continuous emission monitors, New sources, Performance specifications, Test methods and procedures.

Dated: August 18, 2009.

Lisa P. Jackson,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7410, 7414, 7421, 7470–7479, 7491, 7492, 7601 and 7602.

2. Amend Appendix A–2 by revising Method 2H to read as follows:

Appendix A–2 to Part 60 —Test Methods 2G Through 3C

* * * * *

Method 2H—Determination of STACK GAS VELOCITY Taking Into Account Velocity Decay Near the Stack Walls

1.0 Scope and Application

1.1 This method may be applied when determining volumetric flow to account for velocity decay near the walls. Adherence to the requirements of this method will enhance the quality of the data obtained from air pollutant sampling methods.

1.2 This method includes provisions to account for wall effects at circular stack and rectangular duct measurement locations. If the reference method flow is measured in a stack with a circular cross section, follow the procedures in this method for circular stacks. If the reference method flow is measured in a duct with a rectangular cross section follow the procedures in this method for rectangular ducts. All provisions in this method apply to both circular stack and rectangular duct measurement applications unless otherwise specified.

1.3 This method is not applicable for testing circular stacks or ducts less than 3.3 ft (1.0 m) in diameter, or rectangular stacks or ducts less than 8.5 ft^2 (0.79 m^2) in area.

[The terms ''stack'' and ''duct'' are and can be used interchangeably throughout this method.]

2.0 Summary of Method

2.1 A wall effects adjustment factor (WAF) is determined. The WAF is used to adjust the cross-sectional area value used to calculate volumetric flow based on reference method or continuous emission monitoring system (CEMS) gas velocity measurements to take into account velocity decay near the stack or duct walls.

2.2 The method contains a calculation approach to derive wall effects adjustment factors based on either measured velocities or a combination of measured and modeled velocities. The method also contains procedures to determine a duct or stack specific default based on conservative velocity estimates, requiring no additional velocity measurements. Unless a duct or stack specific default is used, any adjustment factor must be based on at least three wall effect test runs.

2.3 The wall effects test may be conducted as part of a relative accuracy test audit (RATA) or as a separate test procedure. Any WAF that is derived using this procedure can only be applied to calculate volumetric flows in conjunction with velocity values from RATAs consisting of the same number (or fewer) of Method 1 of Appendix A–1 traverse points used to determine the WAF or from a CEMS for which such a RATA has been conducted. A wall effects test must be completed whenever the stack or ductwork is altered such that the flow profile is significantly changed.

3.0 Definitions

3.1 d_{last} means, depending on context, either (1) the distance from the wall of the last one-inch incremented wall effects traverse point or (2) the traverse point located at that distance (see Figures 2H–3 and 2H–4).

3.2 d_{rem} means, depending on context, either (1) the distance from the wall of the centroid of the area between d_{last} and the interior edge of the Method 1 of Appendix A–1 equal-area sector closest to the wall or (2) the traverse point located at that distance (see Figure 2H–3). For rectangular duct measurement locations, more than one d_{rem} point may be required (*see* Figure 2H–4):

3.2.1 d_{rem_y} represents d_{rem} for the wall perpendicular to the test port wall.

3.2.2 d_{rem_x} represents d_{rem} for the test port wall.

3.2.3 d_{rem_c} represents d_{rem} for the Method 1 corner equal-area sector.

3.3 *''May,'' ''Must,'' ''Shall,'' ''Should,''* and the imperative form of verbs.

3.3.1 *''May''* is used to indicate that a provision of this method is optional.

3.3.2 *''Must,'' ''Shall,''* and the imperative form of verbs (such as ''record'' or ''enter'') are used to indicate that a provision of this method is mandatory.

3.3.3 *''Should''* is used to indicate that a provision of this method is not mandatory but is highly recommended as good practice.

3.4 *Method 1* refers to 40 CFR Part 60, Appendix A–1, ''Method 1–Sample and Velocity Traverses for Stationary Sources.''

3.5 *Method 2* refers to 40 CFR Part 60, Appendix A–1, ''Method 2–Determination of Stack Gas Velocity and Volumetric Flow Rate (Type S Pitot Tube).''

3.6 *Method 2F* refers to 40 CFR Part 60, Appendix A–1, ''Method 2F–Determination of Stack Gas Velocity and Volumetric Flow Rate with Three-Dimensional Probes.''

3.7 *Method 2G* refers to 40 CFR Part 60, Appendix A–2, ''Method 2G–Determination of Stack Gas Velocity and Volumetric Flow Rate with Two-Dimensional Probes.''

3.8 *One-inch incremented wall effects traverse point* means any of the wall effects traverse points that are located at one-inch intervals, i.e., traverse points d_1 through d_{last} (*see* Figures 2H–3 and 2H–4).

3.9 *Opposing test port wall* means the wall that is parallel to the test port wall on the opposite side of the duct or stack.

3.10 *Relative accuracy test audit (RATA)* is a field test procedure performed in a stack or duct in which a series of concurrent measurements of the same effluent stream is taken by a reference method and an installed monitoring system. A RATA usually consists of a series of 9 to 12 sets of such concurrent measurements, each of which is referred to as a RATA run. In a volumetric flow RATA, each reference method run consists of a complete traverse of the stack or duct.

3.11 *Test port wall* means the wall of the duct or stack in which test ports are mounted.

3.12 *Wall effects unadjusted average velocity* means the average gas velocity, not accounting for velocity decay near the wall, as determined in accordance with Method 2, 2F, or 2G for a Method 1 traverse.

3.13 *Wall effects adjusted average velocity* means the average gas velocity, taking into account velocity decay near the wall, as calculated from measurements at the Method 1 traverse points and at the additional wall effects traverse points specified in this method.

3.14 *Wall effects traverse point* means a traverse point located in accordance with Section 8.1.2 of this method.

4.0 Interferences [Reserved]

5.0 Safety

This method may involve hazardous materials, operations, and equipment. This method does not purport to address all of the health and safety considerations associated with its use. It is the responsibility of the user of this method to establish appropriate health and safety practices and to determine the applicability of occupational health and safety regulatory requirements prior to performing this method.

6.0 Equipment and Supplies

The provisions pertaining to equipment and supplies in the method that is used to take the traverse point measurements (i.e., Method 2, 2F, or 2G of Appendix A–1 and A–2) are applicable under this method.

7.0 Reagents and Standards [Reserved]

8.0 Sample Collection and Analysis

8.1 *Traverse Point Locations and Measurements.* Conduct measurements at Method 1 of Appendix A–1 and wall effects traverse points in accordance with Method 2, 2F, or 2G of Appendix A–1 and A–2 and Section 8.2 of this method. Determine the location of the Method 1 of Appendix A–1 traverse points in accordance with Section 8.1.1, and the location of the wall effects traverse points in accordance with Section 8.1.2. The alternative procedures of Section 8.3 may be used in lieu of performing all the measurements specified in this section. All traverse points are determined with respect to the test ports used when conducting RATAs.

8.1.1 Method 1 equal-area traverse point locations. Determine the location of the Method 1 of Appendix A–1 equal-area traverse points using Table 1–1 (Cross Section Layout for Rectangular Stacks) or Table 1–2 (Location of Traverse Points in Circular Stacks) in Method 1 of Appendix A–1, as appropriate, and the procedure described in Section 11.3 of Method 1 of Appendix A–1.

8.1.2 Wall effects traverse point locations. Measurements must be taken at the following points from at least four test ports. Measurements may be taken from any available test port, provided that all measurements are made in the same test plane and that at least four test ports are used. For the purpose of this method, near wall measurements are excluded from test ports where the flow is disturbed at a required traverse point located in the equal area nearest the test port wall because upstream cross-bracing (or some other disturbance) near the traverse location is directly in-line with the required traverse point. If necessary or desired, near wall measurements can be made from ports located on more than one duct wall on rectangular ducts or stacks.

8.1.2.1 Circular stack wall effects traverse point locations:

(a) One-inch increments from the wall. At least one increment point must be measured. Measurements may be taken at any number of additional one-inch increments, provided that each point must be located at a distance that is a whole number (e.g., 1, 2, 3) multiple of 1 in. (2.5 cm) from the wall and that no one-inch intervals are omitted between increments.

(b) d_{rem}, as determined using Equation 2H–1.

$$d_{rem} = r - \sqrt{\left(\frac{p-1}{p}\right)r^2 - rd_{last} + \frac{1}{2}d_{last}^2} \qquad \text{Eq. 2H-1}$$

Where:

r = stack or duct radius in in. (cm)

p = the number of Method 1 of Appendix A–1 equal area traverse points on a diameter, (e.g., for a 16-point traverse, p = 8)

8.1.2.5 For circular stack measurement locations, the last one-inch interval, d_{last}, must not be closer to the center of the stack or duct than the distance of the interior boundary, d_b, of the Method 1 of Appendix A–1 equal area closest to the wall. That is, $d_{last} \leq d_b$, where:

$$d_b = r\left(1 - \sqrt{1 - \frac{2}{p}}\right) \qquad \text{Eq. 2H-2}$$

(c) d_{M1}, the distance of the first Method 1 of Appendix A–1 equal area traverse point closest from the test port wall. Measurements need not be repeated if already required under Section 8.1.1.

8.1.2.2 Rectangular duct wall effects traverse point locations:

(a) One-inch increments from the wall. At least one increment point must be measured. Measurements may be taken at any number of additional one-inch increments, provided that each point must be located at a distance that is a whole number (e.g., 1, 2, 3) multiple of 1 in. (2.5 cm) from the wall and that no one-inch intervals are omitted between increments.

(d) d_{rem_x}, as determined using Equation 2H–3.

(e) d_{rem_y}, as determined using Equation 2H–5.

(f) d_{M1_y}, the distance between the wall perpendicular to the test port wall and the centroid of the Method 1 exterior equal-area sector adjacent to that wall as determined using Equation 2H–7.

(g) d_{M1}, the distance of the first Method 1 of Appendix A–1 equal area traverse point closest from the test port wall. Measurements need not be repeated if already required under Section 8.1.1.

8.1.2.3 If the probe cannot be positioned at 1 in. (2.5 cm) from the wall (e.g., because of insufficient room to withdraw the probe shaft) or if the flue gas velocity cannot be measured at 1 in. (2.5 cm) from the wall because the port extends beyond the wall into the stack or duct, take measurements at the one-inch incremented wall effects traverse point closest to the wall where the probe can be positioned and the velocity probe head clears the port. It should be noted that the full extent of velocity decay may not be accounted for if measurements cannot be made at the 1-in. incremented wall effects traverse points closest to the wall.

8.1.2.4 For circular stack measurement locations, calculate the distance d_{rem} to within ±1/4 in. (6.4 mm):

8.1.2.6 For rectangular duct measurement locations, calculate the following distances to within ±1/4 in. (6.4 mm):

$$d_{rem_x} = d_{last} + \frac{\left(d_{b_x} - d_{last}\right)}{2} \qquad \text{Eq. 2H-3}$$

(a) d_{rem}

Where:

d_{b_x} = the distance from the test port wall to the interior edge of the Method 1 of Appendix A–1 equal-area sector closest to that wall (Equation 2H–4)

d_{last} = the distance from the test port wall to the last one-inch measurement farthest from that wall as defined in Section 3.1. (If $d_{last} > d_{b_x}$, then substitute the greatest one-inch interval less than or equal to d_{b_x} in the preceding equation to calculate d_{rem_x}.)

$$d_{b_x} = \frac{L_x}{P_x} \qquad \text{Eq. 2H-4}$$

Where:

L_x = length of the duct or stack in the direction perpendicular to the test port wall (see Figure 2H–2)

P_x = number of traverse points at each test port as determined by Method 1 of Appendix A–1

(b) d_{rem_y}

$$d_{rem_y} = d_{last} + \frac{\left(d_{b_y} - d_{last}\right)}{2} \qquad \text{Eq. 2H-5}$$

Where:

d_{b_y} = the distance from the wall perpendicular to the test port wall to the interior edge of the Method 1 of Appendix A–1 equal-area sector closest to that wall (Equation 2H–6)

d_{last} = the distance from the test port wall to the last one-inch measurement farthest from that wall as defined in Section 3.1. (If $d_{last} > d_{b_y}$, then substitute the greatest one-inch interval less than or equal to d_{b_y} in the preceding equation to calculate d_{rem_y}.)

$$d_{b_y} = \frac{L_y}{P_y} \qquad \text{Eq. 2H-6}$$

Where:

L_y = length of the duct or stack in the direction parallel to the test port wall (see Figure 2H–2)

P_y = number of test ports required by Method 1 of Appendix A–1 along a single wall

(c) d_{M1_y}

$$d_{M1_y} = \frac{d_{by}}{2} \qquad \text{Eq. 2H-7}$$

8.1.3 Special considerations. The following special considerations apply when the distance between traverse points is less than or equal to ½ in. (12.7 mm).

8.1.3.1 A wall effects traverse point and the Method 1 of Appendix A–1 traverse point. If the distance between a wall effects traverse point and the Method 1 of Appendix A–1 traverse point is less than or equal to ½ in. (12.7 mm), taking measurements at both points is allowed but not required or recommended. If measurements are taken at only one point, take the measurements at the point that is farther from the wall, and use the velocity obtained at that point as the value for both points.

8.1.3.2 d_{rem} and d_{last}. If the distance between d_{last} and d_{rem} (or, for rectangular ducts, d_{rem_x}, d_{rem_y}, or d_{rem_c}) is less than or equal to ½ in. (12.7 mm), taking measurements at d_{rem} is allowed but not required or recommended. If measurements are not taken at d_{rem}, the measured velocity value at d_{last} must be used as the value for both d_{last} and d_{rem}.

8.1.3.3 d_{rem_x} and d_{rem_y}. If the distance between the two d_{rem} points is less than or equal to ½ in (12.7 mm), taking measurements at each of the affected points is allowed but not required or recommended. If measurements are not taken at each of the affected d_{rem} points, the measured velocity may be taken at one of them and substituted for the remaining point.

8.2 *Traverse Point Sampling Order and Probe Selection.* Determine the sampling order of the Method 1 of Appendix A–1 and wall effects traverse points, and select the appropriate probe(s) for the measurements, taking into account the following considerations.

8.2.1 To reduce the likelihood of velocity variation and its potential impact on the wall effect determinations, the following provisions of this method shall be met.

8.2.1.1 All wall effects traverse points specified in Section 8.1.2 shall be sampled without interruption.

8.2.1.2 During each run, the entire integrated Method 1 and wall effects traverse across all test ports shall be as short as practicable.

8.2.2 The same type of probe must be used to take measurements at all Method 1 of Appendix A–1 and wall effects traverse points. However, different probes of the same type may be used at different ports (e.g., Type S probe 1 at port A, Type S probe 2 at port B) or at different traverse points accessed from a particular port (e.g., Type S probe 1 for Method 1 of Appendix A–1 interior traverse points accessed from port A, Type S probe 2 for wall effects traverse points and the Method 1 of Appendix A–1 exterior traverse point accessed from port A). The identification number of the probe used to obtain measurements at each traverse point must be recorded.

8.3 *Alternative Measurement Reduction Approaches (Optional).* The following alternatives may be used to reduce the number of measurements required to calculate WAF values. The velocities calculated using these alternative approaches will be used in conjunction with the procedures in Section 12 to determine WAF values.

8.3.1 In lieu of taking measurements at each point, Equation 2H–8 may be used to calculate velocities for each one-inch interval and all other points (e.g., d_{remx}) that are less than 12 in. (30 cm) from the test port wall based on the velocity measured at the first available one-inch interval that is at least two in. from the wall and the velocity measured 12 in. (30 cm) from the wall.

$$V_d = V_2 - \left(V_2 - V_1\right)\frac{\ln\left(d/12\right)}{\ln\left(y_1/12\right)} \qquad \text{Eq. 2H-8}$$

Where:

V_d = velocity at distance d from wall, ft/s (m/s)

V_1 = velocity measured at the closest available one-inch interval that is at least two in. from the wall, ft/s (m/s)

V_2 = velocity measured at a distance of 12 in. (30 cm) from the wall, ft/s (m/s)

y_1 = distance of the closest available one-inch interval that is at least two in. from the wall, in. (cm/2.54)

d = distance d from wall, in. (cm/2.54)

8.3.2 Duct or stack specific WAF default values may be determined in conjunction with the procedures of Section 12 using velocity values calculated in the following manner.

$$V_d = V_2\left[\frac{\ln\frac{d}{0.0024} + 0.41\left(8.5\right)}{\ln\frac{y_2}{0.0024} + 0.41\left(8.5\right)}\right] \qquad \text{Eq. 2H-9}$$

Where:

V_d = velocity at distance d from wall, ft/s (m/s)

V_2 = velocity measured at the first regular equal area traverse point, ft/s (m/s)

y_2 = reference distance determined in accordance with 8.3.2(a) or (b), in. (cm/2.54)

d = distance d from wall, in. (cm/2.54)

(a) Calculate the velocity at the near wall one-inch intervals (1 in. to 12 in.) using Equation 2H–9. Use y_2 = distance from the wall of the first Method 1 of Appendix A–1 equal area traverse point minus 0.5 in. (1.27 cm) unless the distance is greater than 12 in. (30 cm) then use y_2 = 12 in. (30 cm). If y_2 is less than one in. (2.54 cm), use y_2 = 1 in. (2.54 cm).

(b) Calculate the velocities at the d_{rem}, d_{remx}, d_{remy}, and d_{M1y} locations using Equation 2H–9. Use y_2 = distance from the wall of the first regular equal area traverse point. If the respective distance (d_{rem}, d_{remx}, d_{remy}, or d_{M1y}) is greater than 12 in. (30 cm) but less than the distance from the wall of the first Method 1 of Appendix A–1 equal area traverse point, substitute the velocity measured at the first Method 1 of Appendix A–1 equal area traverse point for desired velocity.

9.0 Quality Control

9.1 *Verifying Traverse Point Distances.* In taking measurements at wall effects traverse

points, it is very important for the probe impact pressure port to be positioned as close as practicable to the traverse point locations in the gas stream. For this reason, before beginning wall effects testing, it is important to calculate and record the traverse point positions that will be marked on each probe (or programmed for automated probes) for each port, taking into account the distance that each port nipple (or probe mounting flange for automated probes) extends out of the stack or duct and any extension of the port nipple (or mounting flange) into the gas stream. Ensure that the distance of each mark from the center of the probe impact pressure port agrees with the previously calculated traverse point positions to within ± ½ in. (6.4 mm).

9.2 *Probe Installation.* Properly sealing the port area is particularly important in taking measurements at wall effects traverse points. For testing involving manual probes, the area between the probe sheath and the port should be sealed with a tightly fitting flexible seal made of an appropriate material such as heavy cloth so that leakage is minimized. For automated probe systems, the probe assembly mounting flange area should be checked to verify that there is no leakage.

9.3 *Velocity Stability.* This method should be performed only when the average gas velocity in the stack or duct is relatively constant over the duration of the test. If the average gas velocity changes significantly during the course of a wall effects test, the test results should be discarded.

10.0 Calibration

The calibration coefficient(s) or curves obtained under Method 2, 2F, or 2G of Appendix A–1 and A–2 and used to perform the Method 1 of Appendix A–1 traverse are applicable under this method.

11.0 Analytical Procedure

Sample collection and analysis are concurrent for this method (see Section 8).

12.0 Data Analysis and Calculations

The following calculations shall be performed to obtain a WAF.

12.1 *Nomenclature.* The following terms are listed in the order in which they appear in Equations 2H–10 through 2H–23.

$\hat{v}_x$ = stack or duct gas point velocity value, adjusted for wall effects, at Method 1 of Appendix A–1 traverse point location (d_{M1}) for the exterior equal-area sectors adjacent to the test port wall, actual ft/sec (m/sec);

v_d = the measured stack gas velocity at distance d from the wall, actual ft/sec (m/sec); Note: $v_0 = 0$;

r = stack or duct radius in in. (cm)

d = distance of a 1-in. incremented wall effects traverse point from the wall, for traverse points d^1 through d_{last}, in. (cm);

δ = distance between one-inch intervals, 1 in., (2.5 cm);

v_{drem} = the measured stack gas velocity at distance d_{rem} from the test port wall, actual ft/sec (m/sec);

d_{last} = distance from the wall of the last 1-in. incremented wall effects traverse point, in. (cm);

p = the number of Method 1 of Appendix A–1 equal area traverse points on a diameter, (e.g., for a 16-point traverse, p = 8);

d_{b_x} = distance from the test port wall to the interior edge of the Method 1 of Appendix A–1 equal-area sector closest to that wall (see Equation 2H–4);

v_{drem_x} = the measured stack gas velocity at distance d_{rem_x} from the test port wall, actual ft/sec (m/sec);

v_{last} = the measured stack gas velocity at distance d_{last} from the wall, actual ft/sec (m/sec);

$\hat{v}_y$ = stack or duct gas point velocity value, adjusted for wall effects, d_{M1_y} from the test port wall, actual ft/sec (m/sec);

v_{drem_y} = the measured stack gas velocity at distance d_{rem_y} from the test port wall, actual ft/sec (m/sec);

d_{b_y} = distance from the wall perpendicular to the test port wall to the interior edge of the Method 1 of Appendix A–1 equal-area sector closest to that wall (see Equation 2H–6);

$\hat{v}_c$ = stack or duct gas point velocity value, adjusted for wall effects, at d_{M1} or d_{M1_y} (whichever is less) from the test port wall, actual ft/sec (m/sec);

$\hat{v}_{drem_c}$ = the measured stack gas velocity at a distance of d_{rem_x} for corner test ports or at a distance of d_{rem_x} if $d_{M1} \leq d_{m1_y}$ or d_{rem_y} if $d_{M1} > d_{M1_y}$ for non-corner test ports, actual ft/sec (m/sec);

C_x = wall effects adjustment factor for a single traverse for all Method 1 of Appendix A–1 non-corner, exterior equal-area sectors adjacent to the test port wall and the opposing test port wall, dimensionless;

n_x = total number of test ports where near wall measurements are made;

v_x = stack or duct gas point velocity value, unadjusted for wall effects, at Method 1 of Appendix A–1 traverse point location (d_{M1}) for the exterior equal-area sectors adjacent to the test port wall, actual ft/sec (m/sec);

j = index test ports where near wall measurements are made;

C_y = wall effects adjustment factor for a single traverse for Method 1 of Appendix A–1 non-corner, exterior equal-area sectors adjacent to the walls perpendicular to the test port wall, dimensionless;

v_y = stack or duct gas point velocity value, unadjusted for wall effects, at d_{M1_y} from the test port wall, actual ft/sec (m/sec);

C^*_c = wall effects adjustment factor for a single traverse for Method 1 of Appendix A–1 corner equal-area sectors that excludes the impact of greater intense shear in the duct corners, dimensionless;

v_c = stack or duct gas point velocity value, unadjusted for wall effects, at d_{M1} for corner test ports or at d_{M1} or d_{M1_y} (whichever distance is less) from for non-corner test ports, actual ft/sec (m/sec);

C_{cadj} = an adjustment factor applied to C^*_c to account for the impact of greater intense shear in the duct corners, calculated in accordance with Section 12.9, dimensionless;

C_c = wall effects adjustment factor for a single traverse for Method 1 of Appendix A–1 corner equal-area sectors including the impact of greater intense shear in the duct corners, dimensionless;

i = index of Method 1 of Appendix A–1 equal-area traverse points;

$\hat{v}_i$ = stack or duct gas point velocity value, adjusted for wall effects, at Method 1 of Appendix A–1 equal-area sector i, actual ft/sec (m/sec);

v_i = stack or duct gas point velocity value, unadjusted for wall effects, at Method 1 of Appendix A–1 equal-area sector i, actual ft/sec (m/sec);

C_i = wall effects adjustment factor for Method 1 of Appendix A–1 equal-area sector i, dimensionless;

n = total number of traverse points in the Method 1 of Appendix A–1 traverse;

v_{avg} = the average stack or duct gas velocity, unadjusted for wall effects, actual ft/sec (m/sec);

$\hat{v}_{avg}$ = the average stack or duct gas velocity, adjusted for wall effects, actual ft/sec (m/sec);

WAF = the overall wall effects adjustment factor derived from v_{avg} and $\hat{v}_{avg}$ for a single traverse, dimensionless;

$\overline{WAF}$ = wall effects adjustment factor that is applied to the cross-sectional area value used to calculate wall effects-adjusted volumetric flow based on reference method or CEMS velocity measurements, dimensionless;

Q_{adj} = the total stack or duct gas volumetric flow rate, adjusted for wall effects, actual ft³/sec (m³/sec);

$Q_{adj_{std}}$ = the total stack or duct gas volumetric flow rate corrected to standard conditions, adjusted for wall effects, scf/sec (scm/sec);

A = duct or stack cross-sectional area at measurement location, ft²;

T_{avg} = average flue gas temperature, °R (°K) [°R = 460 + °F (°K = 273 + °C)];

T_{std} = standard temperature, 528 °R (293 °K);

P_{avg} = average absolute flue gas pressure, in. Hg (mm Hg);

P_{std} = standard absolute pressure, 29.92 in. Hg (760 mm Hg);

12.2 For circular stack measurement locations, calculate the wall effects adjusted velocities for the Method 1 of Appendix A–1 equal area sectors adjacent to the test port wall using Equation 2H–10:

$$\hat{v}_x = \frac{\sum_{d=1}^{d_{last}} \left\{ \frac{v_{d-1} + v_d}{2} \left[(r - d + \delta)^2 - (r - d)^2 \right] \right\} + v_{drem} \left[(r - d_{last})^2 - (r - d_b)^2 \right]}{r^2 - (r - d_b)^2} \qquad \text{Eq. 2H-10}$$

12.3 For rectangular duct measurement locations, calculate the wall effects adjusted velocities for the Method 1 of Appendix A–1 equal area sectors adjacent to the test port wall using the following equations.

12.3.1 Calculate the wall effects adjusted velocity, $\hat{v}_x$, for each of the Method 1 of Appendix A–1 equal-area sectors adjacent to the test port wall using Equation 2H–11. If $d_{last} > d_{b_x}$, substitute the greatest one-inch interval less than d_{b_x} for d_{last}.

$$\hat{v}_x = \frac{\left[\sum_{d=1}^{d_{last}-1}(v_d)\delta + \frac{v_{last}}{2}\delta + v_{dremx}\left(d_{b_x} - d_{last}\right)\right]}{d_{b_x}} \qquad \text{Eq. 2H-11}$$

12.3.2 Calculate the wall effects adjusted velocity, $\hat{v}_y$, for each of the Method 1 of Appendix A–1 equal-area sectors adjacent to the test port wall using Equation 2H–12. If $d_{last} > d_{b_y}$, substitute the greatest one-inch interval less than d_{b_y} for d_{last}.

$$\hat{v}_y = \frac{\left[\sum_{d=1}^{d_{last}-1} v_d\,\delta + \frac{v_{last}}{2}\delta + v_{dremy}\left(d_{b_y} - d_{last}\right)\right]}{d_{b_y}} \qquad \text{Eq. 2H-12}$$

12.3.3 Calculate the wall effects adjusted velocity, $\hat{v}_c$, for each of the Method 1 of Appendix A–1 equal-area sectors adjacent to the test port wall using Equation 2H–13. If $d_{last} > d_{b_x}$ or $d_{last} > d_{b_y}$, substitute the greatest one-inch interval less than d_{b_x} or d_{b_y} (whichever is less) for d_{last}.

$$\hat{v}_c = \frac{\sum_{d=1}^{d_{last}}\left[\left(\frac{v_{d-1}+v_d}{2}\right)\left(d_{b_x}+d_{b_y}-2d+1\right)\right]\delta + v_{drem_c}\left(d_{b_x}-d_{last}\right)\left(d_{b_y}-d_{last}\right)}{d_{b_x}d_{b_y}} \qquad \text{Eq. 2H-13}$$

12.4 For rectangular duct measurement locations, calculate the velocity correction factors for the Method 1 of Appendix A–1 equal area sectors adjacent to the test port wall using the following equations. If any of the test ports are located 12 or less in. from an adjacent wall (or ash layer), then reduce n_x by the number of those ports and substitute that value for n_x in the following equations.

12.4.1 Calculate the wall effects correction factor, C_x, for Method 1 of Appendix A–1 non-corner equal-area sectors adjacent to the test port wall and the opposing test port wall using Equation 2H–14.

$$C_x = \frac{\sum_{j=1}^{n_x}\left(\frac{\hat{v}_x}{v_x}\right)_j}{n_x} \qquad \text{Eq. 2H-14}$$

12.4.2 Calculate the wall effects correction factor, C_y, for Method 1 of Appendix A–1 non-corner equal-area sectors adjacent to the walls perpendicular to the test port wall using Equation 2H–15.

$$C_y = \frac{\sum_{j=1}^{n_x}\left(\frac{\hat{v}_y}{v_y}\right)_j}{n_x} \qquad \text{Eq. 2H-15}$$

12.4.3 Calculate the wall effects correction factor, C^*_c, for all Method 1 of Appendix A–1 corner equal-area sectors using Equation 2H–16.

$$C^*_c = \frac{\sum_{j=1}^{n_x}\left(\frac{\hat{v}_c}{v_c}\right)_j}{n_x} \qquad \text{Eq. 2H-16}$$

12.5 For circular stacks, determine the velocity for each Method 1 of Appendix A–1 equal-area sector, $\hat{v}_i$, adjusted for wall effects in the following manner:

(a) For equal area sectors adjacent to the test port wall that are used for normal reference method flow testing, $\hat{v}_i = \hat{v}_x$, where $\hat{v}_x$ is calculated using Equation 2H–10.

(b) For interior equal area sectors, $\hat{v}_i = v_i$.

(c) If, in accordance with section 8.1.2, near wall measurements are excluded from any test ports that are used for normal reference method flow testing (or no test port is available for any exterior Method 1 of Appendix A–1 equal area sector), the wall effects adjusted velocities for the excluded Method 1 of Appendix A–1 equal area sectors is calculated as $\hat{v}_i = v_I \times C_x$. Calculate C_X using Equation 2H–14.

12.6 For rectangular ducts, calculate the velocity in each Method 1 of Appendix A–1 equal-area sector, $\hat{v}_i$, adjusted for wall effects, using Equation 2H–17:

$$\hat{v}_i = v_i \times C_i \qquad \text{Eq. 2H-17}$$

Where:

C_i is the appropriate correction factor for the given Method 1 of Appendix A–1 equal-area sector:

$C_i = 1$ for Method 1 of Appendix A–1 interior equal-area sectors

$C_i = C_x$ for Method 1 of Appendix A–1 non-corner, exterior equal-area sectors adjacent to the test port wall or the opposing test port wall

$C_i = C_y$ for Method 1 of Appendix A–1 non-corner, exterior equal-area sectors adjacent to the walls perpendicular to the test port wall

$C_i = C_c$ for Method 1 of Appendix A–1 corner equal-area sectors. $C_c = C^*_c \times C_{c_{adj}}$ (See Section 12.9)

12.7 Calculate the wall adjustment factor, *WAF,* using Equations 2H–18 through 2H–20.

12.7.1 Calculate the average stack or duct gas velocity that does not account for velocity decay near the wall (v_{avg} using Equation 2H–18.

$$v_{avg} = \frac{\sum_{i=1}^{n} v_i}{n} \qquad \text{Eq. 2H-18}$$

12.7.2 Calculate the average stack or duct gas velocity, adjusted for wall effects, $\hat{v}_{avg}$, using Equation 2H–19.

$$\hat{v}_{avg} = \frac{\sum_{i=1}^{n} \hat{v}_i}{n} \qquad \text{Eq. 2H-19}$$

12.7.3 Calculate the wall effects adjustment factor, *WAF,* using Equation 2H–20.

$$WAF = \frac{\hat{v}_{avg}}{v_{avg}} \qquad \text{Eq. 2H-20}$$

12.8 *Applying a Wall Effects Adjustment Factor.* A calculated wall effects adjustment factor may be used to adjust the average flue gas volumetric flow obtained using Methods 2, 2F, or 2G of Appendix A–1 and A–1 or

CEMS measurements to take into account velocity decay near the wall of stacks or ducts using Equation 2H–21a or 2H–21b.

$$Q_{adj} = v_{avg}\left(\overline{WAF} \times A\right) \qquad \text{Eq. 2H-21a}$$

$$Q_{adj_{std}} = v_{avg}\frac{T_{std}}{T_{avg}}\frac{P_{avg}}{P_{std}}\left(\overline{WAF} \times A\right) \qquad \text{Eq. 2H-21b}$$

The wall effects adjustment factor, $\overline{WAF}$, shown in Equation 2H–21a and 2H–21b, must be the arithmetic average of WAF values obtained during at least three wall effects test runs unless a stack or duct specific WAF default factor is calculated in accordance with Section 8.3.2. A $\overline{WAF}$ can only be applied when calculating volumetric flows based on velocity data from RATAs consisting of the same number (or fewer) of Method 1 of Appendix A–1 traverse points used to determine the $\overline{WAF}$ or from a CEMS for which such a RATA has been conducted. The $\overline{WAF}$ must be reassessed whenever the stack or ductwork is altered such that the flow profile is significantly changed.

12.9 *Corner Correction.* For rectangular duct measurement locations: A default value of $C_{c_{adj}} = 0.995$ may be used for any duct to account for the more intense viscous shear in the corner regions. Alternatively, calculate a duct specific $C_{c_{adj}}$ using Equation 2H–22:

$$C_{c_{adj}} = 1 - 0.25\left[1 - \left(\frac{\log\frac{\varepsilon D_{eff}}{3.7}}{\log\frac{\varepsilon D_h}{3.7}}\right)^2\right] \qquad \text{Eq. 2H-22}$$

Where:

D_h = hydraulic diameter, ft (m); 4 × cross-sectional area/perimeter

D_{eff} = effective diameter including corner impact; $D_{eff} = [64/(fRe)]D_h$

ε = average duct surface roughness, ft (m)

Calculate D_{eff}, using the value for friction constant, fRe, from the Table 1, interpolating as needed. The parameter b/a is the duct aspect ratio, where b represents the smaller of the two stack or duct dimensions.

TABLE 1—FRICTION CONSTANTS FOR RECTANGULAR DUCTS

b/a	f Re	b/a	f Re
0.00	96.00	0.25	72.93
0.05	89.91	0.40	65.47
0.10	84.68	0.50	62.19
0.125	82.34	0.75	57.89
0.167	78.81	1.00	56.91

Calculate the average stack or duct surface roughness, ε, based on the surface roughness values calculated for each test port location using the Equation 2H–23:

$$\varepsilon = e^{8.5(0.41)}\left(\frac{y_1}{12}\right)^{\frac{V_2}{V_2 - V_1}} \qquad \text{Eq. 2H-23}$$

Where:

V_1 = velocity measured at the closest available one-inch interval from the wall, ft/s (m/s)

V_2 = velocity measured at a distance of 12 in. (30 cm) from the wall, ft/s (m/s)

y_1 = distance of the closest available one-inch interval from the wall, in. (cm)

13.0 Method Performance [Reserved]

14.0 Pollution Prevention [Reserved]

15.0 Waste Management [Reserved]

16.0 Reporting

16.1 *Field Test Reports.* Field test reports shall be submitted to the Agency according to the applicable regulatory requirements. When this method is performed in conjunction with Method 2, 2F, or 2G of Appendix A–1 and A–2 to derive a wall effects adjustment factor, a single consolidated field test report should be prepared. At a minimum, the consolidated field test report should contain (1) all of the general information, and data for Method 1 of Appendix A–1 points, specified in Section 16.0 of Method 2F of Appendix A–1 (when this method is used in conjunction with Method 2F of Appendix A–1) or Section 16.0 of Method 2G of Appendix A–2 (when this method is used in conjunction with Method 2 or 2G of Appendix A–1 and A–2) and (2) the additional general information, and data for Method 1 of Appendix A–1 points and wall effects points, specified in this section (some of which are included in Section 16.0 of Methods 2F and 2G of Appendix A–1 and A–2 and are repeated in this section to ensure complete reporting for wall effects testing).

16.2 *Data for each run.* The following run values should also be included in the field test report.

(a) Average velocity for run, accounting for wall effects, $\hat{v}_{avg}$.

(b) Wall effects adjustment factor derived from a test run, WAF.

16.3 *Quality Assurance and Control.* Quality assurance and control procedures, specifically tailored to wall effects testing, should be described.

16.4 *Reporting a Default Wall Effects Adjustment Factor.* [Reserved]

17.0 References

17.1 *Impact of Viscous Shear Wall Effects on Flow Measurements in Rectangular Ducts,* EPRI, Palo Alto, CA: 2003. 10076649.

17.2 Norfleet, Stephen K. *CTM–041 and Potential Revisions to EPA Reference Method 2H,* 2005 EPRI CEMS Users Group Meeting, Savannah, Georgia, May 2005.

17.3 Norfleet, Stephen K. *Correcting Flow Measurements for Wall Effects in Rectangular Ducts and Stacks,* 2003 EPRI CEM Users Group Meeting, San Diego, California, May 2003.

17.4 White, Frank M. *Fluid Mechanics,* 2nd ed., McGraw-Hill, New York. 1986.

17.5 *EPA Flow Reference Method Testing and Analysis: Findings Report,* U.S. EPA, Acid Rain Division, EPA/430–R–99–009a, May 1999.

17.6 40 CFR Part 60, Appendix A–1, ''Method 1—Sample and Velocity Traverses for Stationary Sources.''

17.7 40 CFR Part 60, Appendix A–1, ''Method 2—Determination of Stack Gas Velocity and Volumetric Flow Rate (Type S Pitot Tube).''

17.8 40 CFR Part 60, Appendix A–1, ''Method 2F—Determination of Stack Gas Velocity and Volumetric Flow Rate with Three-Dimensional Probes.''

17.9 40 CFR Part 60, Appendix A–2, ''Method 2G—Determination of Stack Gas Velocity and Volumetric Flow Rate with Two-Dimensional Probes.''

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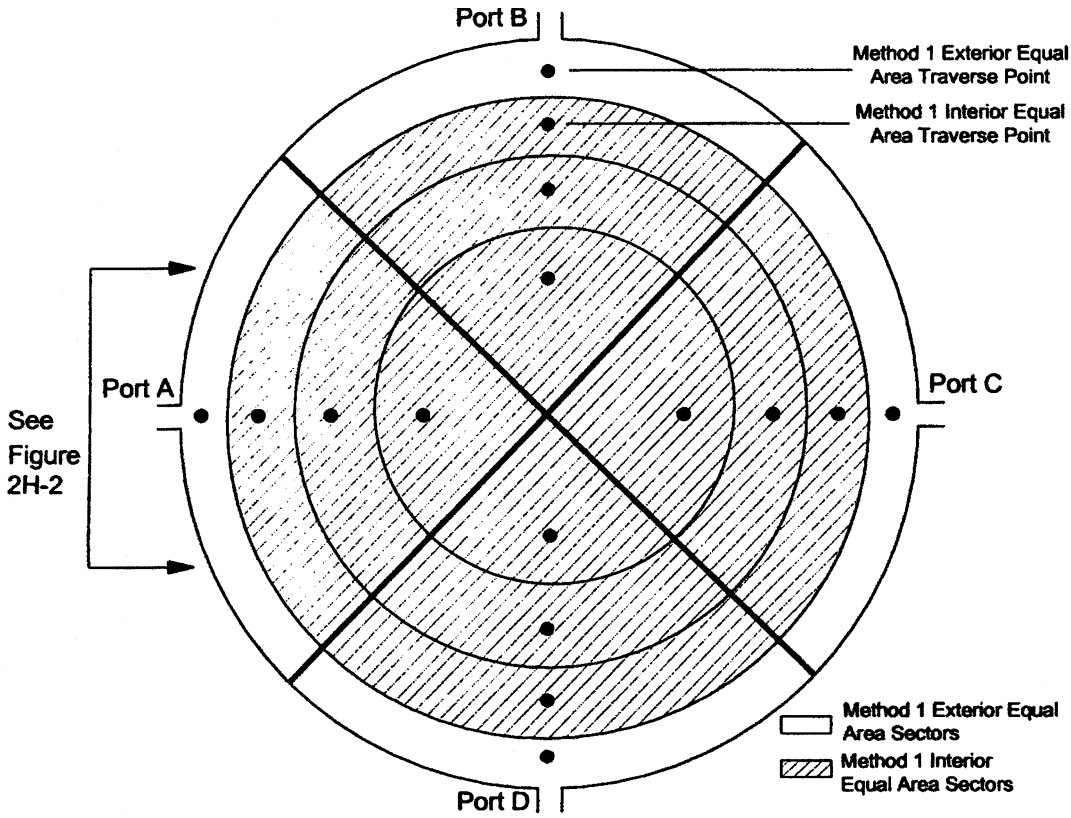

Figure 2H-1. Method 1 Circular Stack Equal Area Sectors

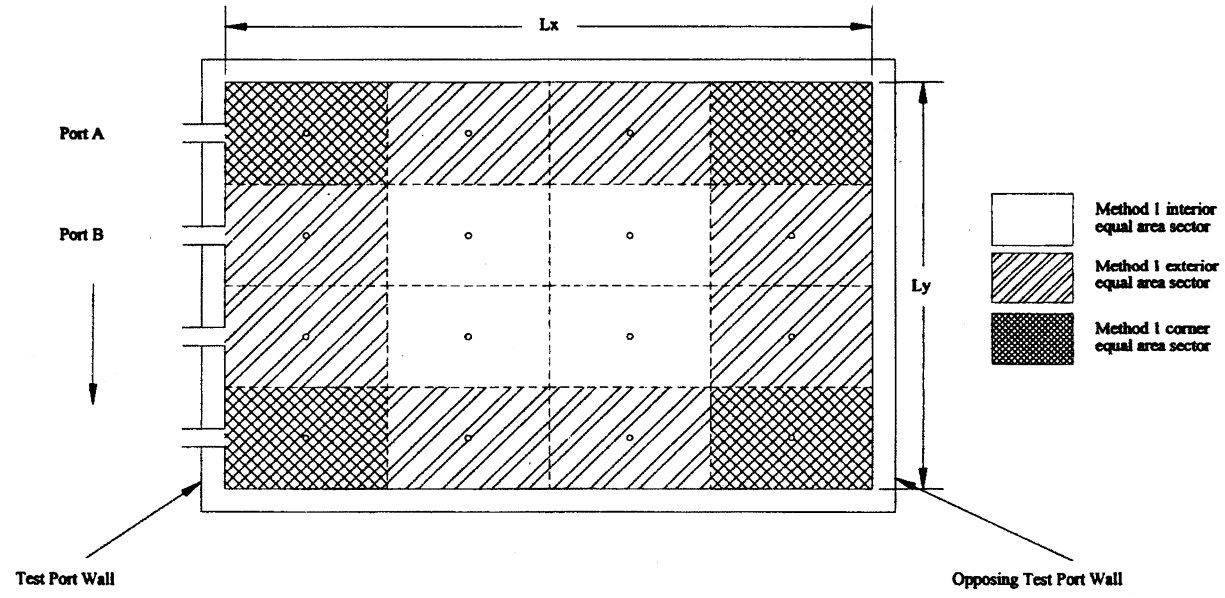

Figure 2H-2. Method 1 Rectangular Duct Equal Area Sectors

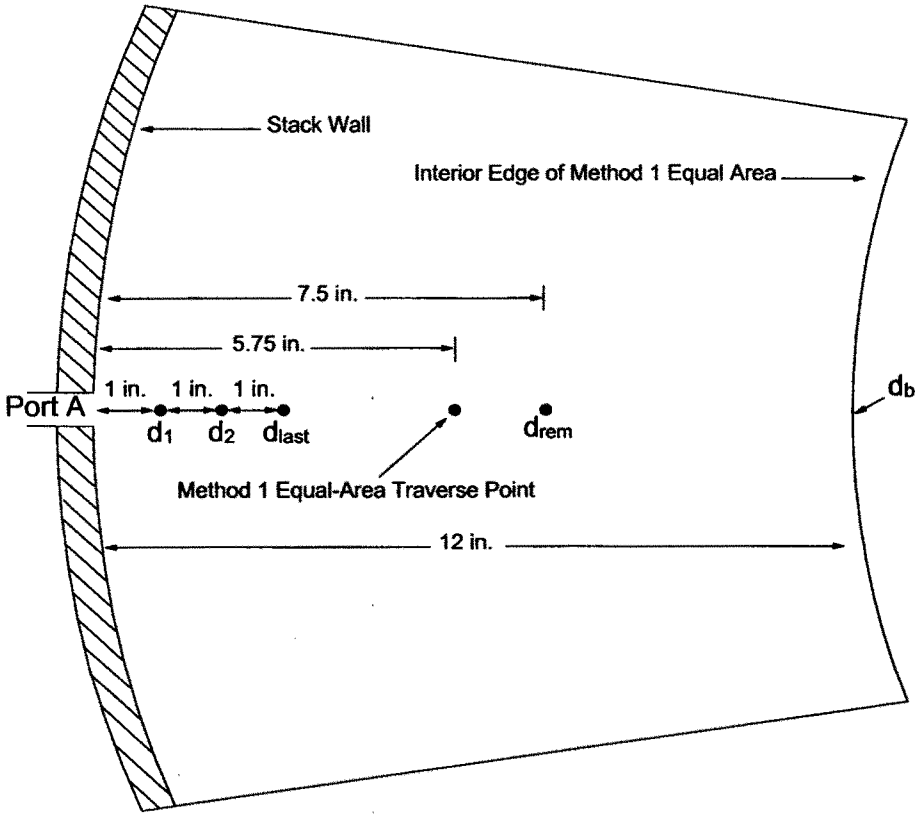

Figure 2H-3. Circular Stack Wall Effects Traverse Points

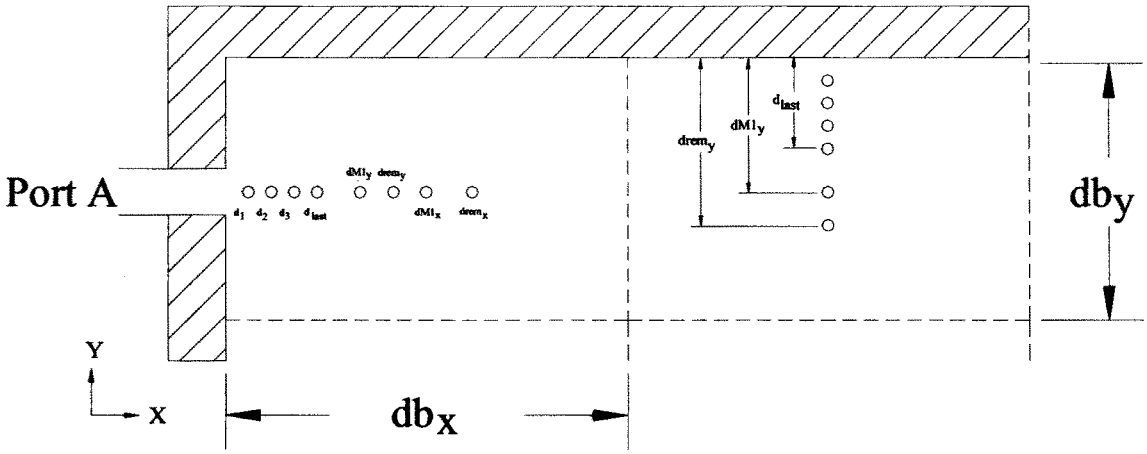

Figure 2H-4. Rectangular Duct Wall Effects Traverse Points

[FR Doc. E9–20395 Filed 8–24–09; 8:45 am]
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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

42 CFR Part 3

RIN 0991–AB53

Patient Safety and Quality Improvement: Civil Money Penalty Inflation Adjustment

AGENCY: Office for Civil Rights, Office of the Secretary, HHS.

ACTION: Proposed rule.

SUMMARY: The Department of Health and Human Services is publishing this companion proposed rule to the direct final rule, published elsewhere in this issue of the **Federal Register**, which amends the Patient Safety and Quality Improvement Rule by adjusting for inflation the maximum civil money penalty amount for violations of the confidentiality provisions of the Rule. We are proposing to amend the penalty amount to comply with the Federal Civil Penalties Inflation Adjustment Act of 1990.

DATES: Submit written or electronic comments on this proposed rule by September 24, 2009. If significant adverse comment is received on this proposed rule or the direct final rule (discussed in the **SUPPLEMENTARY INFORMATION** section), OCR will publish a timely withdrawal of the direct final rule in the **Federal Register**.

ADDRESSES: Send comments to one of the following addresses. Please do not submit duplicate comments. We will treat a comment directed to either the direct final rule or proposed rule as being directed towards both, therefore there is no need to submit comments on both documents.

- *Federal eRulemaking Portal:* You may submit electronic comments at *http://www.regulations.gov.* Follow the instructions for submitting electronic comments. Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.
- *Regular, Express, or Overnight Mail:* You may mail written comments (one original and two copies) to the following address only: U.S. Department of Health and Human Services, Office for Civil Rights, *Attention:* PSQIA CMP Adjustment (RIN 0991–AB53), Hubert H. Humphrey Building, Room 509F, 200 Independence Avenue, SW., Washington, DC 20201. Mailed comments may be subject to delivery delays due to security procedures. Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.
- *Hand Delivery or Courier:* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) to the following address only: Office for Civil Rights, *Attention:* PSQIA CMP Adjustment (RIN 0991–AB53), Hubert H. Humphrey Building, Room 509F, 200 Independence Avenue, SW., Washington, DC 20201. (Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the mail drop slots located in the main lobby of the building.)

Inspection of Public Comments: All comments received before the close of the comment period will be available for public inspection, including any personally identifiable or confidential business information that is included in a comment. We will post all comments received before the close of the comment period at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Andra Wicks, 202–205–2292.

SUPPLEMENTARY INFORMATION:

I. Use of a Direct Final Rule

The Department has chosen to concurrently issue this proposed rule as a direct final rule because we do not expect to receive any significant adverse comment on the rule. A direct final rule is a rule that provides an opportunity for comment and then automatically becomes effective on a later date if no significant adverse comments are received. We do not anticipate significant adverse comments because this rule's amendment is required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note, as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. 3701)) (Inflation Adjustment Act), and the Department has no discretion in how it calculates the adjustment.

We are providing a 30-day comment period for both this proposed rule and the direct final rule. If no significant adverse comments are received, we will take no further action on this proposed rule and the direct final rule will become effective 60 days later. If we do not receive any significant adverse comments in response to the direct final rule or this proposed rule, the direct final rule will become effective on the date set forth in the **DATES** section of that rule. If we receive significant adverse comments on this proposed rule or the direct final rule, we will publish a document withdrawing the direct final rule in the **Federal Register** prior to that date.

If we withdraw the direct final rule based on the receipt of any significant adverse comments, we will publish a final rule based on this proposed rule and any comments to the proposed or direct final rule.

The Department will not provide additional opportunity for comment.

II. Background

The Patient Safety and Quality and Improvement Act of 2005 (Patient Safety Act), 42 U.S.C. 299b–21 to 299b–26, amended Title IX of the Public Health Service Act, 42 U.S.C. 299 *et seq.,* the authorizing statute for the Agency for Healthcare Research and Quality. The Patient Safety Act creates a voluntary program through which health care providers can share information related to patient safety events and concerns (known as patient safety work product (PSWP)) with patient safety organizations (PSOs) for the purpose of improving patient safety and the quality of care nationwide. The Patient Safety Act requires the Department of Health and Human Services (''HHS'' or ''the Department'') to maintain a listing of PSOs. The Patient Safety Act provides that PSWP is both privileged and confidential. While participation in the patient safety program is voluntary, a violation of the Patient Safety Act's confidentiality requirements is subject to a civil money penalty (CMP) of up to $10,000. 42 U.S.C. 299b–22(f).

On November 21, 2008, the Department promulgated regulations to implement the Patient Safety Act. 73 FR 70732, Nov. 21, 2008, adding 42 CFR part 3. The regulations provide for the listing and delisting of PSOs, the confidentiality and privilege protections of PSWP, and procedures for enforcement against violations of the regulations' confidentiality requirements. In particular, under § 3.404, a person who discloses identifiable PSWP in knowing or reckless violation of the Patient Safety Act and 42 CFR part 3 shall be subject to a CMP of not more than $10,000 for each act constituting a violation.

The Agency for Healthcare Research and Quality administers the provisions of the regulations relating to PSOs. The Office for Civil Rights investigates and enforces compliance with the confidentiality provisions and, if warranted, may assess CMPs for knowing or reckless violations of confidentiality.

III. The Inflation Adjustment Act

Congress enacted the Inflation Adjustment Act based on its findings that the impact of CMPs had been reduced by inflation and that reducing the impact of CMPs had weakened their deterrent effect. Inflation Adjustment Act § 2, 28 U.S.C. 2461 note. In general, the Inflation Adjustment Act requires Federal agencies to issue regulations to adjust for inflation each CMP provided by law within their jurisdiction. The Inflation Adjustment Act applies to civil penalties found within the Public Health Service Act, such as the Patient Safety Act's CMP provision.[1]

The Inflation Adjustment Act directs agencies to issue regulations to adjust CMPs under their authority by October 23, 1996, and to make additional adjustments at least once every four years thereafter. Because the Patient Safety Act was enacted after October 23, 1996, we interpret the Inflation Adjustment Act as requiring the Department to issue a regulation to adjust for inflation the Patient Safety Act's CMP amount at least once every four years, beginning from the Patient Safety Act's date of enactment, which was July 29, 2005. Thus, we are proposing this rule four years from the Patient Safety Act's enactment.

IV. Description of Amendment

The Inflation Adjustment Act provides for the adjustment of a penalty amount through a three-step process. First, we calculate an increase in the penalty amount by a ''cost-of-living adjustment.'' Inflation Adjustment Act § 5(a), 28 U.S.C. 2461 note. The Inflation Adjustment Act defines the cost-of-living adjustment as ''the percentage (if any) for each civil monetary penalty by which—(1) The Consumer Price Index for the month of June of the calendar year preceding the adjustment, exceeds (2) the Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law.'' Inflation Adjustment Act § 5(b), 28 U.S.C. 2461 note. Second, we round the adjustment amount pursuant to the methodology set forth in section 5(a) of the Inflation Adjustment Act, which rounds the increase based on the size of the underlying penalty, as follows:

> Any increase determined under this subsection shall be rounded to the nearest—
> (1) Multiple of $10 in the case of penalties less than or equal to $100;
> (2) Multiple of $100 in the case of penalties greater than $100 but less than or equal to $1,000;
> (3) Multiple of $1,000 in the case of penalties greater than $1,000 but less than or equal to $10,000;
> (4) Multiple of $5,000 in the case of penalties greater than $10,000 but less than or equal to $100,000;
> (5) Multiple of $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000; and
> (6) Multiple of $25,000 in the case of penalties greater than $200,000.

Third, pursuant to the Debt Collection Improvement Act of 1996 § 31001(s)(2)'s amendment to the Inflation Adjustment Act, we must limit the first adjustment of a CMP to ten percent of the penalty amount.

With respect to step 1 of the adjustment, the Consumer Price Index (CPI) for June of 2008 (the calendar year preceding this adjustment) was 218.815.[2] The CPI for June of 2005 (the calendar year in which the Patient Safety Act CMP was last set) was 194.5. The percent change in these CPIs is an increase of 12.5 percent. This leads to an unrounded increase in the Patient Safety Act's CMP of $1,250.

Under step 2, we round the amount of the increase ($1,250) based on the size of the penalty ($10,000). Because the penalty of $10,000 is ''greater than $1,000 but less than or equal to $10,000,'' we round the increase to the nearest multiple of $1,000. This leads to a rounded increase of $1,000, for an increased penalty of $11,000.

Step 3 requires that the first adjustment to a civil penalty be limited to 10 percent of the penalty amount. This is the first adjustment to the Patient Safety Act's CMP. Therefore, this 10 percent cap is applicable. Pursuant to this cap, the adjusted penalty cannot exceed $11,000. Because the adjusted penalty is $11,000, it does not exceed the cap. Accordingly, the Patient Safety Act's revised maximum CMP amount, after adjusting for inflation pursuant to the Inflation Adjustment Act, is $11,000.

Based on the above, we are proposing to amend 42 CFR 3.404(b) to provide that the Secretary may impose a CMP of not more than $11,000, rather than the current limit of $10,000, for a violation of the Patient Safety Act's confidentiality requirements.

V. Environmental Impact

We have determined under 21 CFR 25.30(a) and (h) that the proposed action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Paperwork Reduction Act 1995

We have concluded that the CMP adjustment in this proposed rule is not subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) because it does not constitute a ''collection of information.'' That is, the adjustment does not require disclosure of any information to the Department, third parties, or the public.

VII. Federalism

The Department has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. We have determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, we have concluded that the rule does not contain policies that have Federalism implications as defined in the Executive Order and, consequently, a Federalism summary impact statement is not required.

VIII. Analysis of Impacts

The Department has examined the impacts of the proposed rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Department believes that this proposed rule is not a significant regulatory action under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any

[1] We note that § 4 of the Inflation Adjustment Act, found at 28 U.S.C. 2461 note, excludes a small number of statutes, such as the Social Security Act, from the requirement for agencies to adjust their CMPs for inflation. Because the CMPs for title II, subtitle F (Administrative Simplification) of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) are found at section 1176 of the Social Security Act, the Department has not made similar inflation adjustments to the HIPAA administrative simplification CMPs at 45 CFR 160.404.

[2] The Inflation Adjustment Act defines ''Consumer Price Index'' as ''the Consumer Price Index for all-urban consumers published by the Department of Labor.'' Historic data on the Consumer Price Index for all-urban consumers, including the data relied upon in this rulemaking, can be found at *ftp://ftp.bls.gov/pub/special.requests/cpi/cpiai.txt.*

significant impact of a rule on small entities. Because this proposed rule simply adjusts the maximum amount of a CMP, and because the adjustment is required by the Inflation Adjustment Act, the Department certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $133 million, using the most current (2008) Implicit Price Deflator for the Gross Domestic Product.[3] The Department does not expect this proposed rule to result in any 1-year expenditure that would meet or exceed this amount.

List of Subjects in 42 CFR Part 3

Administrative practice and procedure, Civil money penalty, Confidentiality, Conflict of interests, Courts, Freedom of information, Health, Health care, Health facilities, Health insurance, Health professions, Health records, Hospitals, Investigations, Law enforcement, Medical research, Organization and functions, Patient, Patient safety, Privacy, Privilege, Public health, Reporting and recordkeeping requirements, Safety, State and local governments, Technical assistance.

For the reasons stated in the preamble, HHS proposes to amend part 3 of title 42 of the Code of Federal Register as follows:

PART 3—PATIENT SAFETY ORGANIZATIONS AND PATIENT SAFETY WORK PRODUCT

1. The authority citation for part 3 continues to read:

Authority: 42 U.S.C. 216, 299b–21 through 299b–26; 42 U.S.C. 299c–6.

2. Amend § 3.404 by revising paragraph (b) to read as follows:

§ 3.404 Amount of a civil money penalty.

* * * * *

(b) The Secretary may impose a civil money penalty in the amount of not more than $11,000.

Dated: August 18, 2009.

Kathleen Sebelius,

Secretary.

[FR Doc. E9–20418 Filed 8–24–09; 8:45 am]

BILLING CODE 4160–90–P

[3] According to the U.S. Department of Commerce, Bureau of Economic Analysis, the implicit price deflator for gross domestic product was indexed at 92.106 in 1995 (the year of the Unfunded Mandates Reform Act) and 122.422 in 2008. *See http://www.bea.gov/national/nipaweb/* (Table 1.1.9).

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 385

[Docket No. FMCSA–2001–11061]

RIN 2126–AB17

New Entrant Safety Assurance Process: Implementation of Section 210(b) of the Motor Carrier Safety Improvement Act of 1999

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM); request for comments.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) requests comment on the methods the Agency should consider implementing to provide further assurance that a new applicant carrier is knowledgeable about the applicable safety requirements before being granted New Entrant authority. We are considering whether to implement a proficiency examination as part of our revised New Entrant Safety Assurance Process and seek information concerning issues that should be considered in the development and use of such an examination. In addition, the Agency requests comments on other alternatives to a proficiency examination to complement the assurances already in place that new entrant carriers are knowledgeable about applicable safety requirements. This notice responds to issues raised by Advocates for Highway and Auto Safety (Advocates) regarding new entrant applicant knowledgeability.

DATES: Send your comments on or before October 26, 2009.

ADDRESSES: You may submit comments identified by FDMS Docket ID Number FMCSA–2001–11061 by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading under the **SUPPLEMENTARY INFORMATION** caption of this document. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://DocketInfo.dot.gov*.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Johnson, New Entrant Program Specialist, (202) 366–0476, *richard.johnson@dot.gov*. Business hours are from 8 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Public Participation

The Federal eRulemaking Portal (*http://www.regulations.gov*) is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the ''How to Use This Site'' menu option.

Comments received after the comment closing date will be included in the docket, and we will consider late comments to the extent practicable.

Legal Basis for the Rulemaking

Under 49 U.S.C. 31144, the Secretary of Transportation (Secretary) is required to determine whether a new motor vehicle owner or operator is fit to operate safely. Section 210(a) of the Motor Carrier Safety Improvement Act of 1999 [Pub. L. 106–159, 113 Stat. 1764, December 9, 1999] (MCSIA) added

sec. 31144(g) [1] directing the Secretary to establish regulations to require each owner and operator granted New Entrant authority to undergo a safety review within 18 months of starting covered operations. In issuing these regulations, the Secretary was required to: (1) Establish the elements of the safety review, including basic safety management controls; (2) consider their effects on small businesses; and (3) consider establishing alternate locations where such reviews may be conducted for the convenience of small businesses. The Secretary was also required to phase in the new entrant safety review requirements in a manner that takes into account the availability of certified motor carrier safety auditors. The authority to establish such regulations has been delegated to FMCSA (49 CFR 1.73(g)).

Section 210(b) of MCSIA directed the Secretary to ensure applicants for New Entrant authority are knowledgeable about applicable Federal safety requirements before receiving operating authority. The Secretary was required to consider a proficiency examination, as well as other requirements, to ensure applicants understand applicable safety requirements before being granted operating authority.[2]

Congress mandated increased oversight of new entrants because studies indicated these operators had a much higher rate of non-compliance with basic safety management requirements and were subject to less oversight than established operators.

In addition to expanding the Secretary's authority under sec. 31144, sec. 210 of MCSIA was a specific statutory directive consistent with the more general pre-existing legal authority provided by the Motor Carrier Safety Act of 1984 (the 1984 Act) which requires the Secretary to prescribe regulations on commercial motor vehicle safety [Pub. L. 98–554, 98 Stat. 2834, October 30, 1984]. The regulations required by the 1984 Act must prescribe minimum safety standards for commercial motor vehicles (CMVs). At a minimum, the regulations shall ensure: (1) CMVs are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of CMVs do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of CMVs is adequate to enable them to operate the vehicles safely; and (4) the operation of CMVs does not have a deleterious effect on the physical condition of the operators (49 U.S.C. 31136(a)).

This ANPRM solicits information on how the Agency might further ensure that an applicant for the new entrant program is knowledgeable about applicable safety requirements before being granted New Entrant authority. As such, it responds to the sec. 31136(a)(1) mandate that FMCSA regulations ensure CMVs are maintained and operated safely. It does not propose any new operational responsibilities on drivers pursuant to sections 31136(a)(2)–(4).

Background

As discussed above, sec. 210 of MCSIA took a two-pronged approach to improving the safety performance of new entrant motor carriers. First, sec. 210(a) amended 49 U.S.C. 31144 to require new entrant motor carriers to undergo a safety audit within the first 18 months after beginning operations in interstate commerce. Second, sec. 210(b) directed the Secretary to initiate a rulemaking to establish minimum requirements for applicant motor carriers seeking new entrant registration to ensure applicant carriers are knowledgeable about applicable Federal motor carrier safety standards before being granted registration. The Secretary is required to ''consider the establishment of a proficiency examination for applicant motor carriers, as well as other requirements,'' to ensure applicant knowledgeability.

2002 Interim Final Rule

In response to the statutory mandate in MCSIA, on May 13, 2002, FMCSA published an interim final rule (IFR) titled ''New Entrant Safety Assurance Process'' (67 FR 31978), which became effective January 1, 2003. The Agency established a new application process for all new entrant motor carriers under its jurisdiction and domiciled in the United States and Canada. To receive permanent registration, these carriers must successfully complete an 18-month safety monitoring program, including a safety audit.

In the IFR, the Agency did not require a proficiency examination as a method of ensuring that new entrant carriers were knowledgeable of the applicable safety requirements. Instead, FMCSA required applicants to certify, on Form MCS–150A—Safety Certification for Application for USDOT Number, that they were knowledgeable of the Federal Motor Carrier Safety Regulations (FMCSRs) and Hazardous Materials Regulations (HMRs) and attest that they had procedures in place to achieve compliance with specified regulatory requirements, including driver qualifications, hours of service, drug and alcohol testing, and vehicle condition. The IFR also provided for an application package containing educational and technical assistance (ETA) materials regarding the applicable safety requirements. FMCSA decided not to require a proficiency examination because it believed that the ETA materials provided to prospective new entrants and the safety certifications on the required application forms would demonstrate that the new entrants understood applicable safety regulations. Further, the Agency noted its ability to confirm carrier knowledge of applicable regulations during the safety audit required by sec. 210(a) of MCSIA.

2006 Notice of Proposed Rulemaking (NPRM)

In an effort to make the New Entrant Safety Assurance Process more effective, the Agency convened a working group charged with reviewing and making specific recommendations for improving the process. To implement the working group's recommendations, the Agency published an NPRM titled ''New Entrant Safety Assurance Process'' (71 FR 76730) on December 21, 2006. In this NPRM, the Agency addressed compliance with the new entrant applicant knowledge requirements of sec. 210(b) of MCSIA with the following proposals: (1) Updating the ETA materials to better inform new entrants about applicable regulatory requirements and how to fully comply with these requirements; and (2) raising the standard of compliance for passing the new entrant safety audit. The Agency identified 11 regulations that are essential elements of basic safety management control necessary to operate in interstate commerce and proposed that failure to comply with any one of the 11 regulations would result in automatic failure of the audit. The current safety audit evaluation criteria in Appendix A of 49 CFR part 385 would apply if there are no automatic failure violations. The Agency proposed to eliminate the Form MCS–150A requirement as ineffective. After careful consideration the Agency, based on the enhanced ETA materials and more stringent audit standards, concluded that a proficiency exam would not be necessary to achieve sufficient new entrant knowledgeability

[1] MCSIA originally codified section 31144(g) as § 31144(c) and directed that it be added at the end of 49 U.S.C. 31144 following preexisting subsections (c), (d), and (e). Section 4114(c)(1) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub. L. 109–59, 119 Stat. 1144, August 10, 2005) (SAFETEA–LU) recodified this provision as § 31144(g).

[2] Section 210(b) is codified as a note to 49 U.S.C. 31144.

of the applicable regulatory requirements.

2008 Final Rule

The Agency published a final rule on December 16, 2008 (73 FR 76472). FMCSA raised the standard of compliance for passing the new entrant safety audit as follows:

- Adopted an automatic failure component for the safety audit. If a new entrant was found to have a single occurrence of any one of 16 identified regulatory violations which the Agency deems as essential elements of basic safety management controls necessary to operate in interstate commerce, it would automatically fail the safety audit.
- Strengthened the safety monitoring element of the program by identifying seven incidents or regulatory violations which, if discovered during a roadside inspection or by any other means than the safety audit, would trigger expedited action against the new entrant by the Agency.
- Eliminated the requirement to self-certify to pre-operational knowledge of the Federal safety standards and discontinued the associated Form MCS–150A.
- Proposed a new application process and safety monitoring system for motor carriers that are not domiciled in North America (the U.S., Canada, or Mexico).

The final rule became effective on February 17, 2009 with a compliance date of December 16, 2009.

2009 Petition for Reconsideration

Advocates for Highway and Auto Safety (Advocates) filed a petition for reconsideration on January 15, 2009, alleging, in part, that the Agency failed to adequately address sec. 210(b). The Agency granted the portion of the petition related to sec. 210(b) and agreed to initiate a rulemaking to assess whether additional means are available to further ensure new entrant knowledgeability. A copy of the petition decision has been placed in the docket for this rulemaking. The Agency continues to review the other aspects of the petition. This notice responds to issues raised by Advocates regarding new entrant applicant knowledgeability. In addition, through this notice, the Agency demonstrates its commitment to obtaining data and comments from the public to facilitate a thorough and expeditious review intended to inform future regulatory decisions regarding sec. 210(b).

Request for Information and Comments

FMCSA publishes this notice to enable the Agency to continue to carefully explore the costs and benefits of proficiency examinations or other alternatives to address the statutory mandate of ensuring that new applicants are knowledgeable about applicable safety requirements. The Agency considered issuing a Supplemental Notice of Proposed Rulemaking (SNPRM) to further address the proficiency examination issue, but concluded that an SNPRM would delay implementation of enhancements to the safety audit component of the New Entrant Safety Assurance Process necessary to achieve greater motor carrier safety. We believe the public interest is better served by implementing these audit changes through the December 16, 2008, final rule and through this ANPRM will continue to give careful consideration to pre-operational carrier knowledgeability requirement in order to determine whether additional or alternative means are available to ensure new entrant knowledge.

Therefore, FMCSA requests responses to the following issues and questions. Whenever possible, commenters should provide data in support of their responses. FMCSA recognizes that an individual commenter may choose to respond to all of the issues or only a subset, based on his or her area of expertise.

1. Use of a Proficiency Examination

a. Information on the feasibility of establishing a proficiency examination as a component of the New Entrant Safety Assurance Process;

b. Information about analogous types of examinations used in the motor carrier or other industries that could serve as models for a New Entrant proficiency examination;

c. Recommendations on preferred testing protocols;

d. Recommendations on how the Agency should administer a proficiency examination for applicants for New Entrant authority;

e. Recommendations on which motor carrier employees the Agency should require to take a proficiency exam, and the feasibility of motor carriers retaining those employees through the duration of the New Entrant Safety Assurance Program;

f. Information on the costs involved to develop, maintain, implement and administer a proficiency examination;

g. Information on anticipated impacts on new entrants if the Agency requires a proficiency examination as a condition to receiving new entrant authority and beginning operations;

h. Information on how, and to what degree, a proficiency examination would increase carrier knowledge of applicable regulations;

i. Information on whether, and if so, how the increase in knowledge of applicable regulations brought about by the proficiency exam itself would lead to improved motor carrier safety;

j. Other general comments related to establishing a proficiency examination as a component of the New Entrant Safety Assurance Process; and

k. Information regarding the particular needs of small entities in establishing an assurance process.

2. Other Recommended Alternatives

a. Ideas on how the Agency can ensure an applicant carrier is knowledgeable about the applicable safety requirements before being granted New Entrant authority and beginning operations other than through a proficiency examination;

b. Information on estimated costs to create, maintain, and administer the recommended alternative to ensure applicant knowledge;

c. Information on alternative approaches to the regulation that would reduce the impact on small entities;

d. Information on anticipated impacts to new entrants if the Agency recommends the alternative; and

e. Other general comments on the recommended alternatives.

All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the **ADDRESSES** caption of this notice. Comments received after the comment closing date will be included in the docket, and we will consider late comments to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Regulatory Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

In this ANPRM, FMCSA is soliciting information on what methods the Agency might implement, as alternatives or in addition to those already in place, to further ensure that a new applicant carrier is knowledgeable about the applicable safety requirements before being granted New Entrant authority. FMCSA has preliminarily determined this ANPRM

is a significant regulatory action within the meaning of Executive Order 12866 and the U.S. Department of Transportation's regulatory policies and procedures (DOT Order 2100.5 dated May 22, 1980; 44 FR 11034, February 26, 1979). FMCSA believes that a notice relating to new entrant motor carrier requirements may generate considerable public interest and therefore is significant. This notice requests comments on a narrow set of issues and is a highly preliminary part of a continuing process to inform future regulatory decisions concerning carrier knowledgeability under the New Entrant Safety Assurance Process. The potential economic impact of actions FMCSA may implement as a result of this ANPRM is not known at this time. Therefore, a full regulatory evaluation has not yet been prepared. The Agency intends to use the information collected from comments to this docket to determine whether a notice of proposed rulemaking should be developed, and, if necessary, a full regulatory evaluation is appropriate.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) requires federal agencies to assess the potential impacts of their regulatory proposals on small entities and to consider less burdensome alternatives. However, because this rulemaking is still at a preliminary stage, the RFA does not yet apply. However, FMCSA is still interested in understanding how the potential regulatory changes could impact small entities. Accordingly, FMCSA solicits comments, information, and data on how these potential changes would impact small entities and what alternative approaches would minimize any significant impacts to small entities.

Privacy Impact Analysis

Due to the preliminary nature of this document and the fact that it proposes no regulatory changes, FMCSA is unable at this time to complete a privacy impact assessment as required by Section 522(a)(5) of the FY 2005 Omnibus Appropriations Act, Public Law 108–447, div. H, 118 Stat. 2809, 3268 (Dec. 8, 2004) [set out as a note to 5 U.S.C. 552a].

If FMCSA proposes regulatory changes as a result of this ANPRM, the Agency would complete the required analyses.

Unfunded Mandates Reform Act of 1995

FMCSA will analyze any action implemented in subsequent phases of this proceeding to determine whether it would result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $141.3 million or more in any one year, as required by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532).

Executive Order 12988 (Civil Justice Reform)

FMCSA will analyze any action implemented in subsequent phases of this proceeding to determine whether it would meet applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

FMCSA will analyze any action implemented in subsequent phases of this proceeding to determine whether it would concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks.

Executive Order 12630 (Taking of Private Property)

FMCSA will analyze any action implemented in subsequent phases of this proceeding to determine whether it would effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13132 (Federalism)

FMCSA asks for comments from State and local officials about the issues in this ANPRM. FMCSA will analyze any action implemented in subsequent phases of this proceeding using the principles and criteria contained in Executive Order 13132.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), FMCSA must obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations.

The Agency is not yet in a position to analyze fully any potential action it may initiate that may fall within the scope of the Paperwork Reduction Act. If FMCSA proposes any information collection requirements as a result of this ANPRM, the Agency would seek the necessary approval from OMB.

National Environmental Policy Act

FMCSA will analyze any action implemented in subsequent phases of this proceeding for the purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*) to determine whether the action would affect the quality of the environment.

FMCSA will analyze any action implemented in subsequent phases of this proceeding under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 *et seq.*), and implementing regulations promulgated by the Environmental Protection Agency.

Executive Order 12898 (Environmental Justice)

FMCSA will evaluate the environmental effects of any action implemented in subsequent phases of this proceeding in accordance with Executive Order 12898 to determine if there are environmental justice issues associated with its provisions or any collective environmental impact resulting from its promulgation. Environmental justice issues would be raised if there were ''disproportionate'' and ''high and adverse impact'' on minority or low-income populations.

Executive Order 13211 (Energy Effects)

FMCSA will analyze any action implemented in subsequent phases of this proceeding under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use, to determine whether the action would be a ''significant energy action'' under that Executive Order.

List of Subjects in 49 CFR Part 385

Administrative practice and procedure, Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

Issued on: August 19, 2009.

Rose A. McMurray,

Acting Deputy Administrator.

[FR Doc. E9–20393 Filed 8–24–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2009–0049; 2127–AK38]

Federal Motor Vehicle Safety Standard No. 114, Theft Protection and Rollaway Prevention

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: NHTSA is proposing to place a requirement in the Federal motor vehicle safety standards that certain motor vehicles with an automatic transmission that includes a ''park'' position manufactured for sale after September 1, 2010 be equipped with a brake transmission shift interlock. This interlock will require that the service brake pedal be depressed before the transmission can be shifted out of ''park,'' and will function in any starting system key position.

NHTSA is issuing this document in response to a statutory mandate in the Cameron Gulbransen Kids Transportation Safety Act of 2007. The proposed rule would not differ from the Congressional requirement. This rule inserts the mandated requirement into the text of Federal Motor Vehicle Safety Standard No. 114.

DATES: You should submit your comments early enough to ensure that the Docket receives them not later than September 24, 2009.

ADDRESSES: You may submit comments to the docket number identified in the heading of this document by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

Fax: 202–493–2251.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketInfo.dot.gov.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: For technical questions you may contact Gayle Dalrymple, NVS–123, Office of Rulemaking, (202) 366–5559, or *gayle.dalrymple@dot.gov.* For legal issues you may contact Ari Scott, NCC–112, Office of the Chief Counsel, (202) 366–2992, or *ari.scott@dot.gov.* You may send mail to both of these officials at National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. The Legislative Mandate and Changes to FMVSS No. 114
III. Public Participation
IV. Rulemaking Analyses and Notices

I. Background

On February 28, 2008, President G.W. Bush signed into law the ''Cameron Gulbransen Kids Transportation Safety Act of 2007'' (the K.T. Safety Act of 2007). Public Law 110–189, February 28, 2008, 122 Stat 639. This Act related to several aspects of motor vehicle safety involving incidents where a person, frequently a child, could be hurt in non-traffic situations. Specifically, the K.T. Safety Act of 2007 addressed safety concerns relating to power windows, rearward visibility, and vehicles rolling away. With regard to vehicles rolling away, the specific language of the Act included:

(d) Preventing Motor Vehicles From Rolling Away.—

(1) Requirement.—Each motor vehicle with an automatic transmission that includes a ''park'' position manufactured for sale after September 1, 2010, shall be equipped with a system that requires the service brake to be depressed before the transmission can be shifted out of ''park''. This system shall function in any starting system key position in which the transmission can be shifted out of ''park''.

(2) Treatment As Motor Vehicle Safety Standard—A violation of paragraph (1) shall be treated as a violation of a motor vehicle safety standard prescribed under section 30111 of title 49, United States Code, and shall be subject to enforcement by the Secretary under chapter 301 of such title.

* * * * *

(e) Definition of Motor Vehicle—As used in this Act and for purposes of the motor vehicle safety standards described in subsections (a) and (b), the term 'motor vehicle' has the meaning given such term in section 30102(a)(6) of title 49, United States Code, except that such term shall not include—

(1) a motorcycle or trailer (as such terms are defined in section 571.3 of title 49, Code of Federal Regulations); or

(2) any motor vehicle that is rated at more than 10,000 pounds gross vehicular weight.

NHTSA is proposing this rule in response to section (d) of the K.T. Safety Act of 2007's mandate to require a brake shift transmission interlock on light vehicles. We further note that the term ''motor vehicle'' is defined differently in the K.T. Safety Act of 2007 than in 49 U.S.C. 30102. As defined in part (e) of the Act, the term ''motor vehicle'' means a motor vehicle equal or less than 10,000 pounds ''gross vehicular weight'' that is not a motorcycle or a trailer. As to how this definition of motor vehicle as stated by the K.T. Safety Act would relate to ''motor vehicles'' under 49 U.S.C. 30102, the K.T. Safety Act definition is limited to passenger cars, multipurpose passenger vehicles, light trucks, and low-speed vehicles.

According to the legislative history of the K.T. Safety Act of 2007 (S. Rep. 110–275, March 13, 2008)) when a vehicle is inadvertently put into gear or neutral, it may roll away causing harm to bystanders or individuals in the vehicle. As stated in the Congressional record (Sen. Rep. 110–275), Congress believes that children are especially at risk because, should they move a transmission out of the park position, they may not know what they did or how to stop the vehicle once they realize what is happening, and a Brake Transmission Shift Interlock (BTSI) could help prevent these incidents. BTSI, as mandated by Congress, requires depression of the brake pedal to move the gear shift out of the ''park'' position. Since small children typically cannot reach the brake pedal, if a BTSI is in place, Congress decided there is little chance small children can shift the

vehicle into gear by themselves.[1] We note that, in general, key removal by the operator is still the most effective way to prevent children from shifting the vehicle's transmission out of the ''park'' position. The K.T. Safety Act mandates that a BTSI should function in any starting key position.

Prior to the passage of the K.T. Safety Act of 2007, in August of 2006, the Alliance of Automobile Manufacturers and the Association of International Automobile Manufacturers developed a voluntary agreement which requires full implementation of BTSI not later than September 1, 2010.[2] The agreement states that ''any vehicle under 10,000 pounds produced for the U.S. market, with an automatic transmission that includes a 'park' position shall have a system that requires that the service brake be depressed before the transmission can be shifted out of ''park.'' Additionally, the agreement required that manufacturers provide NHTSA with information about which vehicles were equipped with BTSI systems, which will be placed in the docket. Automakers participating in the voluntary agreement include: Aston Martin, BMW Group, Ford Motor Company, Hyundai Motor, Maserati, Nissan, Suzuki, DaimlerChrysler Corporation, General Motors, Isuzu Motors, Mazda, Porsche, Toyota, Ferrari, Honda, Kia Motors, Mitsubishi Motors, Subaru, and Volkswagen Group.

For its part, since model year (MY) 2007, the agency has made available to the public on *http://www.safercar.gov* the list of vehicles equipped and not equipped with BTSI. Approximately 98 percent of MY 2008 motor vehicles are forecasted to be equipped with a BTSI system designed in accordance with the agreement. One of the functions of the K.T. Safety Act of 2007 is that it codifies and makes mandatory the terms of the agreement for all manufacturers and vehicles as described above.

II. The Legislative Mandate and Changes to FMVSS No. 114

Because Congress mandated all vehicles be equipped with BTSI, no action is required by NHTSA for this portion of the legislation to become effective. However, there are several reasons why we are proposing to integrate this requirement into Federal Motor Vehicle Safety Standard (FMVSS) No. 114, *Theft protection and rollaway prevention.* So that manufacturers and others may conveniently find all requirements for rollaway prevention systems in the FMVSSs, we are proposing to locate the requirement for the BTSI together with requirements for other rollaway systems (in paragraph S5 of FMVSS No. 114). We also note that Congress mandated that a violation of the BTSI requirement shall be treated as a violation of a motor vehicle safety standard. To facilitate compliance with the safety requirement and make clear that NHTSA will enforce violations of the BTSI requirement by way of the recall and remedy provisions of the National Traffic and Motor Vehicle Safety Act (49 U.S.C. 30101 *et seq.*), we are proposing to integrate the BTSI requirement into FMVSS No. 114.

Comments are requested on our interpretation of various provisions of section 2(d) of the Act. The last sentence of section (d) states: ''This system shall function in any starting system key position in which the transmission can be shifted out of 'park'. This means that no matter the starting system position the key is in (*e.g.,* ''lock,'' ''accessory,'' or ''start'') the transmission must only shift out of ''park'' when the service brake is depressed. Further, while the second sentence of section (d)(1) refers to the term ''key,'' we believe that the BTSI requirement applies to vehicles that operate with all keys, *i.e.,* a physical device or an electronic code, such as those requiring the operator to enter the code or push a button to start the vehicle. In all vehicles, the brake pedal must be depressed in order to shift the transmission out of the ''park'' position. Other findings we have made are that the reference to ''gross vehicular weight'' in section (e)(2) of the Act is referring to ''gross vehicle weight rating (GVWR),'' a vehicle metric commonly used in the FMVSSs in determining the applicability of the standards, and that the reference to ''manufactured for sale after September 1, 2010'' in section (d)(1) means ''manufactured on or after September 1, 2010.'' Finally, we have not included in FMVSS No. 114 any language relating to a test procedure. Given the relatively simple nature of the requirement, we do not believe a test procedure is needed in the regulatory text. However, in a compliance test, NHTSA will attempt to shift the transmission out of ''park'' without depressing the vehicle's service brake for each ignition position. If the transmission is able to be shifted out of park without the brake pedal depressed, an apparent noncompliance will be deemed to have been found.

We note that because of the difference in the applicability of the BTSI requirement and the general applicability requirements of FMVSS No. 114, we will need to modify paragraph S3, *Application,* to insert the BTSI requirement as it was mandated by Congress. According to section (e) the K.T. Safety Act of 2007:

> The term 'motor vehicle' has the meaning given such term in section 30102(a)(6) of title 49, United States Code, except that such term shall not include—
>
> (1) a motorcycle or trailer (as such terms are defined in section 571.3 of title 49, Code of Federal Regulations); or
>
> (2) any motor vehicle that is rated at more than 10,000 pounds gross vehicular weight.

The vehicles subject to the K.T. Safety Act of 2007 largely overlap with the vehicles currently subject to FMVSS No. 114, but there are some differences. Using the term ''motor vehicle'' as described in 49 U.S.C. 30102, the Congressional definition would apply to passenger cars, trucks, buses, multipurpose passenger vehicles, and low-speed vehicles with a GVWR of 10,000 pounds or less. This contrasts with the vehicle types listed in paragraph S3 of FMVSS No. 114, which includes ''all passenger cars, and to trucks and multipurpose vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or less. However, it does not apply to walk-in van-type vehicles.'' Thus, as a result of the Congressional definition, in addition to all of the vehicles currently subject to FMVSS No. 114, the BTSI requirement would apply to buses (under 10,000 pounds), walk-in van-type vehicles, and low-speed vehicles. We are proposing to add language to paragraph S3 of the standard, to make it clear that the BTSI requirement applies to this somewhat larger class of vehicles, while not changing the applicability of current FMVSS No. 114 requirements.

III. Public Participation

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments,

[1] While this was the rationale provided by Congress, we note that NHTSA has no data on actions and behavior of unattended children in vehicles, although we agree that it is likely accurate.

[2] The announcement and text of this agreement are available on the NHTSA Web site, *http://www.nhtsa.dot.gov.*

to Docket Management at the address given above under **ADDRESSES**.

Comments may also be submitted to the docket electronically by logging onto the Docket Management System Web site at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Please note that pursuant to the Data Quality Act, in order for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines. Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at *http://www.whitehouse.gov/omb/fedreg/reproducible.html.* DOT's guidelines may be accessed at *http://dms.dot.gov.*

How can I be sure that my comments were received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512.)

Will the agency consider late comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How can I read the comments submitted by other people?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location. You may also see the comments on the Internet. To read the comments on the Internet, go to *http://www.regulations.gov.* Follow the online instructions for accessing the dockets.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

IV. Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impacts of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This action was not reviewed by the Office of Management and Budget under E.O. 12866. The agency has considered the impact of this action under the Department of Transportation's regulatory policies and procedures (44 FR 11034; February 26, 1979), and has determined that it is not ''significant'' under them. This rulemaking document was not reviewed under E.O. 12866.

Today's notice proposes to insert the Congressional mandate into the Federal motor vehicle safety standards for the convenience of users. It does not impose any additional regulatory requirements. We also note that most vehicles are already equipped with a BTSI system. The agency concludes that the impacts of the proposed changes are so minimal that preparation of a full regulatory evaluation is not required.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity ''which operates primarily within the United States.'' (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this NPRM under the Regulatory Flexibility Act. I certify that this NPRM will not have a significant economic impact on a substantial number of small entities. This proposal merely includes in the Federal motor vehicle safety standards a requirement passed by Congress in the K.T. Safety Act of 2007. No substantive changes to the Act are being proposed in this notice. Small organizations and small government units would not be significantly affected since this proposed action would not affect the price of new motor vehicles. For the vast majority of motor vehicle manufacturers, the BTSI requirement merely codifies a voluntary pledge made by manufacturers to install BTSI systems on all vehicles by September 1, 2010.

Executive Order 13132 (Federalism)

NHTSA has examined today's proposal pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The agency has concluded that the proposal does not have federalism implications because it does not have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Further, no consultation is needed to discuss the issue of preemption in connection with today's proposed rule. The issue of preemption can arise in connection with NHTSA rules in at least two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision: ''When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable

to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter.'' 49 U.S.C. 30103(b)(1). It is this statutory command that unavoidably preempts State legislative and administrative law, not today's rulemaking, so consultation would be unnecessary.

Second, the Supreme Court has recognized the possibility of implied preemption: in some instances, State requirements imposed on motor vehicle manufacturers, including sanctions imposed by State tort law, can stand as an obstacle to the accomplishment and execution of a NHTSA safety standard. When such a conflict is discerned, the Supremacy Clause of the Constitution makes the State requirements unenforceable. See *Geier* v. *American Honda Motor Co.*, 529 U.S. 861 (2000). However, NHTSA has considered the nature and purpose of today's proposal and does not currently foresee any potential State requirements that might conflict with it. Without any conflict, there could not be any implied preemption.

Executive Order 12988 (Civil Justice Reform)

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, February 7, 1996) requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

Pursuant to this Order, NHTSA notes as follows. The issue of preemption is discussed above. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

Protection of Children From Environmental Health and Safety Risks

Executive Order 13045, ''Protection of Children from Environmental Health and Safety Risks'' (62 FR 19855, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental, health, or safety risk that the agency has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency.

Although this notice is part of a rulemaking expected to have a positive safety impact on children, it is not an economically significant regulatory action under Executive Order 12866. Consequently, no further analysis is required under Executive Order 13045.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. There is not any information collection requirement associated with this NPRM.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, (15 U.S.C. 272) directs the agency to evaluate and use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or is otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers. The NTTAA directs us to provide Congress (through OMB) with explanations when we decide not to use available and applicable voluntary consensus standards. There are no voluntary consensus standards developed by voluntary consensus standards bodies pertaining to the BTSI requirement. However, we note that currently, most automobile manufacturers incorporate a brake shift transmission interlock in their vehicles. In 2006, most large vehicle manufacturers agreed to a voluntary commitment to include a BTSI system in their vehicles by September 1, 2010. Finally, due to the BTSI provision in the K.T. Safety Act of 2007, all manufacturers will be required by statute to include it in their vehicles by September 1, 2010. This NPRM proposes to incorporate the already-existing requirement into FMVSS No. 114 and does not include any additional requirements on manufacturers.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). Before promulgating a NHTSA rule for which a written statement is needed, section 205 of the UMRA generally requires the agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the agency to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation of why that alternative was not adopted.

This NPRM will not result in any expenditure by State, local, or tribal governments or the private sector. Thus, this NPRM is not subject to the requirements of sections 202 and 205 of the UMRA.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

Regulatory Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the

name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://www.regulations.gov.*

List of Subjects in 49 CFR Part 571

Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 of Title 49 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.114 would be amended by revising paragraphs S3 and S5 and adding paragraph S5.3 to read as follows:

§ 571.114 Standard No. 114; Theft protection and rollaway prevention.

* * * * *

S3 *Application.* This standard applies to all passenger cars, and to trucks and multipurpose passenger vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or less. However, it does not apply to walk-in van-type vehicles. Additionally, paragraph S5.3 of this standard applies to all motor vehicles, except trailers and motorcycles, with a GVWR of 4,536 kilograms (10,000 pounds) or less.

* * * * *

S5 *Requirements.* Each vehicle subject to this standard must meet the requirements of S5.1, 5.2, and 5.3. Open-body type vehicles are not required to comply with S5.1.3.

* * * * *

S5.3 *Brake Transmission Shift Interlock.* Each motor vehicle manufactured on or after September 1, 2010 with a GVWR of 4,536 kilograms (10,000 pounds) or less with an automatic transmission that includes a ''park'' position shall be equipped with a system that requires the service brake to be depressed before the transmission can be shifted out of ''park.'' This system shall function in any starting system key position in which the transmission can be shifted out of ''park.'' This section does not apply to trailers or motorcycles.

* * * * *

Issued on August 19, 2009.

Julie Abraham,

Director, Office of International Policy, Fuel Economy and Consumer Programs.

[FR Doc. E9–20384 Filed 8–24–09; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register

Vol. 74, No. 163

Tuesday, August 25, 2009

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

August 20, 2009.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Forest Service

Title: Health Screening Questionnaire.

OMB Control Number: 0596–0164.

Summary of Collection: The Protection Act of 1922 (16 U.S.C. 594) authorizes the Forest Service (FS) to fight fires on National Forest System lands. Individuals seeking recertification or employment as a new firefighter with the FS or Department of Interior (DOI) must complete the Health Screening Questionnaire (HSQ). The information collected pertains to an individual's health status and health history.

Need and Use of the Information: FS and DOI will collect information from potential applicants using forms FS–5100–31, HSQ and FS–5100–30, Work Capacity Test. Wildland firefighters perform long hours of arduous labor in adverse conditions. The information collected is used to determine whether an individual being considered for a position can carry out those duties in a manner that will not place the candidate or coworkers unduly at risk due to inadequate physical fitness and health. If the information is not collected, the Government's liability risk is high, special needs of an individual may not be known, or the screening of an applicant's physical suitability would be greatly inhibited.

Description of Respondents: Individuals or households.

Number of Respondents: 5,397.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 896.

Forest Service

Title: Extending the Forest Service Message to Diverse Urban Publics.

OMB Control Number: 0596–NEW.

Summary of Collection: Enabling legislation, Forest and Rangeland Renewable Resources Research Act of 1978, as amended, (Pub. L. 95–307) directs the Secretary to research the multiple uses and products, including recreation, of forests and rangelands to facilitate their most effective use. In addition, EO 12898 mandates a series of Federal actions to address environmental justice in minority populations and low-income populations. Forest Service will conduct a study to specifically address the intent of this mandate by using a telephone survey to gather information from adults in metropolitan areas adjacent to urban National Forests.

Need and Use of the Information: Random quota samples of adults, pre-identified as being from four major ethnic/racial groups of African-American, Asian, Hispanic and White decent will be contacted to participate in a telephone survey. FS will collect information from respondents about their forest usage, and the sources of information they rely upon to learn about various opportunities available to them in the forests. The information will be used to help the Forest Service to effectively outreach to minority populations and gain a better understanding of the varying motivations that differ by ethnicity for taking vacations or day trips and constraints experienced by diverse publics.

Description of Respondents: Individuals or households.

Number of Respondents: 2,500.

Frequency of Responses: Reporting: Other (one time).

Total Burden Hours: 344.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E9–20440 Filed 8–24–09; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

August 20, 2009.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information

on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Animal Welfare.

OMB Control Number: 0579–0093.

Summary of Collection: The Laboratory Animal Welfare Act (AWA) (Pub. L. 89–544) enacted August 24, 1966, and amended December 24, 1970 (Pub. L. 91–579); April 22, 1976 (Pub. L. 94–279); and December 23, 1985 (Pub. L. 99–198) required the U.S. Department of Agriculture (USDA) to regulate the humane care and handling of most warm-blooded animals, including marine mammals, used for research or exhibition purposes, sold as pets, or transported in commerce. The legislation and its amendments were the result of extensive demand by organized animal welfare groups and private citizens requesting a Federal law to protect such animals. The Animal and Plant Health Inspection Service (APHIS), Animal Care (AC) has the responsibility to enforce the AWA and the provisions of 9 CFR, Chapter 1, Subchapter A, which implements the AWA.

Need and Use of the Information: APHIS will collect information to insure that animals used in research facilities or for exhibition purposes are provided humane care and treatment. The information is used to ensure those dealers, exhibitors, research facilities, carriers, etc., are in compliance with the Animal Welfare Act and regulations and standards promulgated under this authority of the Act.

Description of Respondents: Business or other for-profit; Not for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 11,687.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 47,815.

Animal and Plant Health Inspection Service

Title: Importation of Tomatoes from Certain Central American Countries.

OMB Control Number: 0579–0286.

Summary of Collection: Under the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the Secretary of Agriculture is authorized to carry out operations or measures to detect, eradicate, suppress, control, prevent, or retard the spread of plant pests new to the United States or not known to be widely distributed throughout the United States. The Animal and Plant Health Inspection Service (APHIS) allows certain types of tomatoes grown in approved registered production sites in Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua to be imported into the United States with treatment. The conditions are designed to prevent the introduction of quarantine pests into the United States, including trapping, pre-harvest inspection, and shipping procedures.

Need and Use of the Information: APHIS requires that each shipment of tomatoes must be accompanied by a phytosanitary certificate issued by the National Plant Protection Organization and bearing the declaration, ''These tomatoes were grown in an area recognized to be free of Medfly and the shipment has been inspected and found free of the pest listed in the requirements.'' Failure to collect this information would cripple APHIS' ability to ensure that peppers and tomatoes from Central America are not carrying fruit flies.

Description of Respondents: Business or other for-profit.

Number of Respondents: 24.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 287.

Animal and Plant Health Inspection Service

Title: Importation of Shelled Peas from Kenya .

OMB Control Number: 0579–0302.

Summary of Collection: Under the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the Secretary of Agriculture is authorized to carry out operations or measures to detect, eradicate, suppress, control, prevent, or retard the spread of plant pests new to the United States or not known to be widely distributed throughout the United States. The Animal and Plant Health Inspection Service (APHIS) fruits and vegetables regulations allows the importation of shelled garden peas from Kenya into the continental United States while continuing to protect against the introduction of quarantined peas.

Need and Use of the Information: APHIS requires that some plants or plant products be accompanied by a phytosanitary inspection certificate that is completed by plant health officials in the originating or transiting country. APHIS uses the information on the certificate to determine the pest condition of the shipment at the time of inspection in the foreign country. Without the information, all shipments would need to be inspected very thoroughly, thereby requiring considerably more time. This would slow the clearance of international shipments.

Description of Respondents: Federal Government.

Number of Respondents: 2.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 8.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E9–20441 Filed 8–24–09; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Arctic National Wildlife Refuge Recreation Visitor Study

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the new information collection: Arctic National Wildlife Refuge Recreation Visitor Study—2009.

DATES: Comments must be received in writing on or before October 26, 2009 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Alan E. Watson, Aldo Leopold Wilderness Research Institute, Forest Service, Rocky Mountain Research Station, 790 E. Beckwith Ave., Missoula, MT 59801.

Comments also may be submitted via facsimile to 406–542–4196 or by e-mail to: *awatson@fs.fed.us.*

The public may inspect comments received at the Aldo Leopold Wilderness Research Institute, Forest Service, Rocky Mountain Research Station, 790 E. Beckwith Ave., Missoula, MT, during normal business hours. Visitors are encouraged to call ahead to 406–542–4197 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Alan E. Watson, Aldo Leopold Wilderness Research Institute at 406–542–4197. Individuals who use TDD may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Arctic National Wildlife Refuge Recreation Visitor Study—2009.

OMB Number: 0596–NEW.

Expiration Date of Approval: This information collection will expire 3 years from the date of OMB approval.

Type of Request: New.

Abstract: The Aldo Leopold Wilderness Research Institute in Missoula, Montana, works under an interagency agreement with the U.S. Fish & Wildlife Service of the U.S. Department of the Interior to provide information to support management planning for public wilderness areas and National Wildlife Refuge. Management of specific refuges is directed by laws, policies, and Comprehensive Conservation Plans. The Wilderness Act of 1964 directs the National Wilderness Preservation System be managed to protect natural wilderness conditions and to provide outstanding opportunities for the public to find solitude or primitive and unconfined types of recreational experiences. The Arctic National Wildlife Refuge contains 8 million acres of federally protected wilderness, the Molly Beattie Wilderness and over 11 million acres of land and water managed for multiple values including subsistence, wildlife, water quality, and scenic values. The Arctic National Wildlife Refuge is also mandated to provide recreation experiences to visitors under a number of laws, including the National Wildlife Refuge System Administration Act, as amended by the National Wildlife Refuge System Improvement Act, the Refuge Recreation Act, and the Alaska National Interest Lands Conservation Act.

To help meet Federal agencies' mandates related to recreation, scientists at the Aldo Leopold Wilderness Research Institute periodically monitor and report to managers and the public visitor use and user characteristics and visitor feedback on management actions on Federal lands. Agency personnel use the information to ensure that visitors' recreational activities do not harm natural resources of the refuge, and that recreation experiences in wilderness areas are protected.

In the 2009 survey, the Agency intends to record responses of visitors to the Arctic National Wildlife Refuge in the same areas as the survey that was conducted in 1977, prior to the area attaining National Wildlife Refuge and wilderness area designation status. The Agency intends to expand the survey to include visitor feedback regarding major factors that influence the experiences in the area, including encounters with other visitors, subsistence use, research, administrative use, and availability of information needed to plan trips. The data from this information collection would be stored at the Aldo Leopold Wilderness Research Institute in Missoula, Montana. Scientists working at the Research Institute would conduct the data analysis.

The U.S. Fish & Wildlife Service would use information from this collection to:

(1) Understand visitor demographics, frequency of visits, and residence;

(2) Understand visitor activities, such as whether they are hunting, river floating, method of access, size of group, difficulty in finding campsites, conditions encountered, and information available for trip planning;

(3) Understanding how the Agency's management of the Arctic National Wildlife Refuge and other potential facilitating and constraining factors influence a visitor's recreation experience;

(4) Understand how to educate recreation visitors so they do not leave impacts from their visits; such as wildlife disturbance, damaged vegetation, litter, and polluted lakes and streams, and can engage in high quality, and safe recreational experiences; and

(5) Provide information that may assist in revision of the Arctic National Wildlife Refuge Comprehensive Conservation Plan.

Respondents would be recreation visitors to the Arctic National Wildlife Refuge. Visitors would be contacted as they enter or exit the Arctic National Wildlife Refuge and would be provided with a self-addressed, postage-pre-paid postcard that offers them alternative methods of response to the survey: (1) Mail the postcard to the Leopold Institute with a name and address to have the survey sent to them, (2) mail the postcard to the Leopold Institute with an electronic e-mail address to obtain an electronic version of the survey, or (3) use the Web address on the postcard to access the survey. All responses would be voluntary and anonymous (names would not be connected with responses in any way). Data collected in this information collection are not available from other sources and have not been collected since 1977.

This study would only ask non-local recreation visitors, non-local, non-subsistence users questions about their recreation visit, their personal demographics relevant to provision of service and educational research, and factors that have influenced or are likely to influence their recreation visits. Survey respondents would be told that their responses are voluntary and would be anonymous. The survey will not include questions related to oil exploration or development in the boundaries of the Arctic National Wildlife Refuge.

Estimate of Annual Burden: 20 minutes.

Type of Respondents: Individuals who use government facilities and services.

Estimated Annual Number of Respondents: 900.

Estimated Annual Number of Responses per Respondent: Once.

Estimated Total Annual Burden on Respondents: 300 hours.

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the additional use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget approval.

Dated: August 13, 2009.

William J. Lange,

Acting Deputy Chief, Research & Development.

[FR Doc. E9–20442 Filed 8–24–09; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Food Aid Quality Improvement Report

AGENCY: Farm Service Agency, USDA.

ACTION: Notice.

SUMMARY: The Farm Service Agency (FSA) is making available the Food Aid Quality Project report prepared by Sharing Science and Technology to Aid in the Improvement of Nutrition (SUSTAIN). The report contains recommendations for improvements in the specifications, micronutrient composition, commodity sampling, and testing regimes for commodities procured by FSA for the U.S. international food assistance programs.

FOR FURTHER INFORMATION CONTACT: Howard Froehlich, Export Program Manager, phone: (202) 720–7398; mail: Farm Service Agency, USDA, ATTN: Howard Froehlich, Export Program Manager, Commodity Operations Divisions, STOP 0553, 1400 Independence Avenue, SW., Washington, DC 20250–0553; e-mail: *Howard.Froehlich@wdc.fsa.usda.gov*; fax: (202) 690–3123. Persons with disabilities who require alternative means for communication information (Braille, large print, audiotape, *etc.*) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION: The purpose of this notice is to announce the availability of the Food Aid Quality Project report. The Food Aid Quality Project Report was undertaken to meet the objectives established jointly by USDA and the United States Agency for International Development (USAID) to improve and ensure the quality, safety, nutrient delivery and shelf life of international food assistance provided by the U.S. Government to 56 countries worldwide. SUSTAIN, a nonprofit organization, conducted the project and provided the report that contains their findings and recommendations to USDA.

The public can access the published report through the Commodity Operations Web site at *http://www.fsa.usda.gov/FSA/webapp?area=home&subject=coop&topic=landing.*

USDA will continue to review the report and evaluate the recommendations submitted by SUSTAIN and will consult with the Food Aid Consultative Group before actions are taken in response to the findings.

Signed at Washington, DC, on August 17, 2009.

Jonathan Coppess,

Administrator, Farm Service Agency.

[FR Doc. E9–20296 Filed 8–24–09; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Notice of Funds Availability Under the American Recovery and Reinvestment Act, 2009; Correction

AGENCIES: Rural Housing Service, Rural Business-Cooperative Service, and Rural Utilities Service, USDA.

ACTION: Notice; correction.

SUMMARY: The Rural Housing Service (RHS), Rural Business-Cooperative Service (RBS), and Rural Utilities Service (RUS) published a document in the Federal Register on July 23, 2009, at 74 FR 36448. The document did not provide a date for the comment period for the collection of information under the **DATES** section or the ''Comments'' under the Paperwork Reduction Act section.

FOR FURTHER INFORMATION CONTACT: Information regarding this correction should be directed to Cheryl Thompson, Regulations and Paperwork Management Branch, 202–692–0043.

Correction

In the **Federal Register** of July 23, 2009, in FR Doc. E9–17512, the corrections are as follows:

1. On page 36448, in the first column, at the end of the paragraph under **DATES**, add the following paragraph:

The comment period for information collection under the Paperwork Reduction Act of 1995 continues through September 21, 2009. Comments on the paperwork burden must be received by this date to be assured of consideration.

2. On page 36450, in the second column, at the end of the paragraph under ''Paperwork Reduction Act'', add the following paragraph:

Comments

Comments are invited regarding: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of Rural Development, including whether the information will have practical utility; (b) the accuracy of Rural Development's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Cheryl Thompson, Regulations and Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave., SW., Washington, DC 20250. All responses to this Notice will be summarized and included in the request for OMB approval. All comments will also be a matter of public record.

Dated: August 18, 2009.

Dallas Tonsager,

Under Secretary.

[FR Doc. E9–20347 Filed 8–24–09; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Request for Proposals: Fiscal Year 2009 Funding Opportunity for Research on the Economic Impact of Cooperatives

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Initial notice of request for proposals.

SUMMARY: Rural Business-Cooperative Service programs are administered through USDA Rural Development. USDA Rural Development announces the availability of $300,000 in competitive cooperative agreement funds for fiscal year (FY) 2009 to conduct research on the national economic impact of all types of cooperatives. USDA Rural Development hereby requests proposals from institutions of higher education interested in applying for a competitively awarded cooperative research agreement. This funding is a follow through on to funding awarded in FY 2006, FY 2007 and FY 2008, the intent of which was to encourage research on the critical issue of the

economic value of cooperatives. Funding for FY 2009 is expected to expand upon research undertaken with FY 2006, FY 2007 and FY 2008 funds.

DATES: Interested parties may submit completed applications for the cooperative agreement on paper or electronically according to the following deadlines:

Paper copies must be received by September 18, 2009, to be eligible for FY 2009 funding. Electronic copies must be received by September 18, 2009, to be eligible for FY 2009 funding. Late applications are not eligible for FY 2009 funding.

ADDRESSES: Applicants may obtain application forms, guides, and materials for the cooperative agreement at *http://www.rurdev.usda.gov/rbs/coops/reic.htm* or by contacting USDA Rural Development at (202) 720–8460, (TDD: (800) 877–8339, Federal Information Relay Service) and ask for the cooperative research agreement application kit.

Submit completed paper applications for a cooperative agreement to USDA Rural Development's Cooperative Programs, *Attn:* Cooperative Research, Mail STOP 3250, Room 4016–South, 1400 Independence Avenue, SW., Washington, DC 20250–3250. The phone number that should be used for FedEx packages is (202) 720–7558.

Submit electronic applications at *http://www.grants.gov*, following the instructions found on this Web site.

FOR FURTHER INFORMATION CONTACT: Visit the program Web site at *http://www.rurdev.usda.gov/rbs/coops/reic.htm*, which contains application guidance, including an Application Guide and application forms. Or you may contact USDA Rural Development at (202) 720–8460 (TDD: (800) 877–8339 Federal Information Relay Service).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* OMB must approve all ''collections of information'' by USDA Rural Development. The Act defines ''collection of information'' as a requirement for ''answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *.'' (44 U.S.C. 3502(3)(A)) Because the RFP is expected to receive less than 10 respondents, the ''collection of information'' requirement in the Paperwork Reduction Act does not apply.

Overview

Federal Agency: Rural Business-Cooperative Service.

Funding Opportunity Title: Research on the Economic Impact of Cooperatives.

Announcement Type: Initial announcement.

Catalog of Federal Domestic Assistance Number: 10.778.

Dates: You may submit completed applications for the cooperative agreement on paper or electronically according to the following deadlines:

Paper copies must be received by September 18, 2009, to be eligible for FY 2009 funding. Late applications are not eligible for FY 2009 funding.

Electronic copies must be received by September 18, 2009, to be eligible for FY 2009 funding. Late applications are not eligible for FY 2009 funding.

I. Funding Opportunity Description

This solicitation is issued pursuant to the Omnibus Appropriations Act, 2009 (Pub. L. 111–8) directing funds ''for a cooperative research agreement with a qualified academic institution to conduct research on the national economic impact of all types of cooperatives.'' The Secretary of Agriculture has delegated the program's administration to USDA Rural Development.

The primary objective of this cooperative research agreement program is to facilitate university research on the national economic impact of cooperatives. This cooperative research agreement is a continuation of research conducted in USDA Rural Development cooperative research agreements RD–06–01, RBS–07–31 and RBS–08–00. As further described below, data generated and results produced in cooperative research agreements RD–06–01, RBS 07–31 and RBS–08–00 will be accessible to the institution awarded this cooperative research agreement. Existing Web-based methodologies will be used to enable cooperatives to enter financial and other impact data on a periodic basis; apply the methodology to collect data updates estimates of economic impact of cooperatives; analyze the impact of cooperatives on local wealth creation and retention, and analyze the total returns to investment in cooperatives. Methodologies will need to account for cooperative organizational complexity, such as a single organization's several local, regional, and national locations, as well as sector differences.

The cooperative agreement proposal must address specifically, and in detail sufficient to assess the effectiveness of proposed work, how the following deliverables will be provided:

1. An analysis of how and the extent to which cooperatives facilitate the creation and retention of wealth within the local communities they serve. The analysis should include the identification of cooperative models and practices that could enhance cooperative contribution to local wealth creation. The University of Wisconsin has completed the first phase of the multi-year projects by producing estimates of wealth creation by cooperatives by using standard methods of estimation of business economic impact for the U.S. and for each of the following four sectors: commercial sales and marketing, social and public services, financial services, and utilities, and estimated for each of the seventeen subsectors. These results are published on the Web (*http://www.rurdev.usda.gov/rbs/coops/reic.htm*) and specific collaboration with the University of Wisconsin is expected in making further use of this database.

2. An analysis of the total returns to investment in cooperatives, including returns to the cooperative businesses at the enterprise level as well as the impact of cooperative returns and services to the cooperatives' members at their enterprise levels. Total returns to investment should be analyzed using the same classification scheme as reported in Deliverable #1 above.

3. Further development of sound methodologies and their application to newly-generated data for identifying and measuring the economic impacts of cooperatives as to the following:

i. Local, State, and regional significance and impact analysis using appropriate input-output, social accounting matrix, and multiplier tools;

ii. Differential economic impacts of cooperatives as compared to other types of organizations performing the same general functions, including but not limited to (a) the differential impacts of local ownership versus ownership from outside the region and (b) any special economic impacts generated by the patron-oriented characteristics of cooperative businesses;

iii. Whether a non-cooperative business enterprise would exist in the local or regional economy if the cooperative did not exist;

iv. Displacement or replacement of other businesses by cooperatives;

v. Departure of a cooperative including a cooperative's replacement by another type of business;

vi. Impact on local, regional, and national tax generation and on infrastructure.

vii. Cross sector analysis of cooperative governance, financial and operating best practices;

viii. Opportunities for cooperatives from different sectors to form working relationships.

4. USDA Rural Development will arrange for the winner of this competition to obtain updates and preliminary data from the University of Wisconsin, the FY 2006, FY 2007 and FY 2008 award recipient, as further progress is made on the FY 2006, FY 2007 and FY 2008 research. Data available to the FY 2009 award recipient will include:

i. Number and headquarters location of cooperatives,

ii. Volume measures appropriate for each sector (revenues, dollar value, and other appropriate size indicators),

iii. Number of persons impacted by the cooperative (members, patrons, or investors), and

iv. Number of full-time equivalent jobs and other economic impact variables.

v. Cooperative data will be identified using the North American Industry Classification System (NAICS).

5. Economic impact analyses as described in deliverables 3 and 4 above to be conducted on a sector basis. Sectors to be analyzed include:

i. Housing,

ii. Health care,

iii. Daycare/elder care,

iv. Financial services,

v. Grocery/consumer retail,

vi. Business-to-business (wholesaling, manufacturing),

vii. Agricultural marketing (including organic and conventional),

viii. Agricultural supplies and services,

ix. Public services (including transportation and education),

x. Renewable energy, and

xi. Utilities.

6. The population of a database for individual cooperative and summary data collected and additional data generated as necessary to obtain economic impacts as described in deliverables 3 and 4 above. The database is to be delivered to USDA Rural Development. USDA Rural Development will work with the grantee to integrate data from this deliverable into existing database applications.

7. The performance of subcontracting services, oversight, and financial controls for the overall project.

8. The submission of quarterly progress reports and quarterly financial reports to USDA Rural Development; and

9. The preparation and submission of publishable quality written reports for Deliverables 1 through 5 to USDA Rural Development.

USDA Rural Development will competitively award one cooperative agreement to fund the collection and analysis of data to determine the national economic impact of cooperatives. An institution of higher education may collaborate with others on the research and data collection. A formal consortium of academic institutions is allowed.

Definitions

The definitions at 7 CFR 3019.2 are incorporated by reference.

II. Award Information

Type of Award: Cooperative Agreement.

Fiscal Year Funds: FY 2009.

Approximate Total Funding: $300,000.

Approximate Number of Awards: 1.

Approximate Average Award: $300,000.

Floor of Award Range: None.

Ceiling of Award Range: $300,000.

Anticipated Award Date: September 25, 2009.

Budget Period Length: 12 months.

Project Period Length: 12 months.

III. Eligibility Information

A. Eligible Applicants

Applicants must be institutions of higher education. Proposals may be submitted by public or private colleges or universities, research foundations maintained by a college or university, or private nonprofit organizations funded by a group of colleges or universities.

B. Cost Sharing or Matching

Matching funds are not required but are highly encouraged. Applicants must verify in their applications that matching funds are available for the time period of the agreement if the matching funds are required to complete the project. Matching funds must be provided by either the applicant or by a third party in the form of cash or in-kind contributions. Matching funds must be spent on eligible expenses and must be from eligible sources.

C. Other Eligibility Requirements

Indirect Cost Eligibility: Public Law 111–8, ''Omnibus Appropriations Act, 2009'' continues the provision which states ''No funds appropriated by this Act may be used to pay negotiated indirect cost rates on cooperative agreements or similar arrangements between the United States Department of Agriculture and nonprofit institutions in excess of 10 percent of the total direct cost of the agreement when the purpose of such cooperative arrangements is to carry out programs of mutual interest between the two parties.'' Indirect costs in excess of 10 percent of the direct cost, therefore, will be ineligible for funding.

Activity Eligibility: A cooperative agreement reflects a relationship between the United States Government and an eligible recipient where the principal purpose of the relationship is the transfer of money, property, services, or anything of value to the eligible recipient to carry out the desired research; and substantial involvement is anticipated between USDA Rural Development acting for the United States Government and the eligible recipient during the performance of the research in the agreement. A cooperative agreement is not a grant. *Therefore, the project proposed must include a description of USDA Rural Development's substantial participation.* USDA Rural Development may subsequently negotiate the nature of its participation before the cooperative agreement is executed.

Applicants that propose budgets that include more than 10 percent of total project costs that are ineligible for the program will be ineligible, and the application will not be considered for funding. However, if an application with 10 percent or less of ineligible costs is selected for funding, all ineligible costs must be removed from the project and replaced with eligible activities or the amount of the award will be reduced accordingly.

Cooperative Agreement Period Eligibility: Applications that have a timeframe of more than 12 months will be considered ineligible and will not be considered for funding. Applications that request funds for a time period ending after September 30, 2010, will not be considered for funding.

Completeness Eligibility: Applications without sufficient information to determine eligibility will not be considered for funding. Applications that are missing any required elements (in whole or in part) will not be considered for funding.

IV. Application and Submission Information

A. Address To Request Application Package

If you plan to apply using a paper application, you can obtain the application package for this funding opportunity at *http://www.rurdev.usda.gov/rbs/coops/reic.htm.* If you plan to apply electronically, you must visit *http://www.grants.gov* and follow the instructions.

B. Content and Form of Submission

You may submit your application in paper or in an electronic format. You

may view the Application Guide at *http://www.rurdev.usda.gov/rbs/coops/reic.htm.*

If you submit your application in paper form, you must submit one signed original of your complete application along with two additional copies.

If you submit your application electronically, you must follow the instructions given at *http://www.grants.gov.* Applicants are advised to visit the site well in advance of the application deadline if they plan to apply electronically to insure that they have obtained the proper authentication and have sufficient computer resources to complete the application.

An application must contain all of the following elements. Any application that is missing any element or contains an incomplete element will not be considered for funding:

1. *Form SF–424, Application for Federal Assistance.* In order for this form to be considered complete, it must contain the legal name of the applicant, the applicant's Dun and Bradstreet Data Universal Numbering System (DUNS) number, the applicant's complete mailing address, the name and telephone number of a contact person, the employer identification number (EIN), the start and end dates of the project, the Federal funds requested, other funds that will be used as matching funds, an answer to the question, ''Is applicant delinquent on any Federal debt?'', the name and signature of an authorized representative, the telephone number of the authorized representative, and the date the form was signed. Other information requested on the form may be applicable, but the above-listed information is required for an application to be considered complete.

The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Applicants can receive a DUNS number at no cost by accessing *http://www.dnb.com/us/* or calling (866) 705–5711.

2. *Form SF–424A, Budget Information—Non-Construction Programs.* In order for this form to be considered complete, the applicant must fill out Sections A, B, C, and D. The applicant must include both Federal and any matching funds to be included.

3. *Form SF–424B, Assurances—Non-Construction Programs.* In order for this form to be considered complete, the form must be signed by an authorized official and include the title, name of applicant, and date.

4. *Title Page.* The title page must include the title of the project as well as any other relevant identifying information. The length should not exceed one page.

5. *Table of Contents.* For ease of locating information, each proposal must contain a detailed Table of Contents immediately following the title page.

6. *Executive Summary.* A summary of the proposal, not to exceed one page, must briefly describe the project, including goals, tasks to be completed, and other relevant information that provides a general overview of the project. In the event an applicant submits more than one page for this element, only the first page submitted will be considered.

7. *Eligibility Discussion.* A detailed discussion, not to exceed four pages, will describe how the applicant meets the eligibility requirements. In the event that more than four pages are submitted, only the first four pages will be considered.

i. *Applicant Eligibility.* The applicant must first describe how it meets the definition of an institution of higher education.

ii. *Purpose Eligibility.* The applicant must describe how the project purpose is eligible for funding. The project purpose is comprised of two components. First, the applicant must describe how the proposed project consists of activities needed to determine the national economic impact of all types of cooperatives. Second, the applicant must demonstrate that the combined activities are sufficient to estimate the national economic impact of all types of cooperatives.

8. *Proposal Narrative.* The narrative must include the following information:

i. *Project Title.* The title of the proposed project must be brief, not to exceed 75 characters, yet describe the essentials of the project. It should match the project title submitted on the SF–424. The project title does not need to appear on a separate page. It can be included on the title page and/or on the information sheet.

ii. *Information Sheet.* A separate one-page information sheet listing each of the evaluation criteria referenced in this funding announcement followed by the page numbers of all relevant material contained in the proposal that address or support each criterion.

iii. *Goals of the Project.* A clear statement of the ultimate goals of the project must be included. There must be an explanation of how economic benefit will be measured.

iv. *Workplan.* The narrative must contain a description of the project and set forth the tasks involved in reasonable detail. The description should specify the activity, who will perform the activity, during what timeframe the activity will take place, and the cost of the activity. Please note that one of the proposal evaluation criteria evaluates the workplan and budget. Applicants should only submit the workplan and budget once, either in this section or as part of the workplan/budget evaluation criterion discussion.

v. *Proposal Evaluation Criteria.* Each of the proposal evaluation criteria referenced in this funding announcement must be addressed, specifically and individually, in narrative form.

9. *Certification of Judgment.* Applicants must certify that the United States has not obtained a judgment against them. No Federal funds shall be used to pay a judgment obtained by the United States. It is suggested that applicants use the following language for the certification. ''[INSERT NAME OF APPLICANT] certifies that the United States has not obtained a judgment against it.'' A separate signature is not required.

10. *Verification of Matching Funds.* Matching funds are not required but are highly encouraged. If matching funds are provided, applicants must provide a budget to support the workplan showing all sources and uses of funds during the project period. Applicants will be required to verify any and all matching funds, both cash and in-kind. All proposed matching funds must be specifically documented in the application. If the matching funds are to be provided by an in-kind contribution from the applicant, the application must include a signed letter from an authorized representative of the applicant verifying the goods or services to be donated, when the goods and services will be donated, and the value of the goods or services. Applicants should note that only goods or services for which no expenditure is made can be considered in-kind. If the applicant is paying for goods and services as part of the matching funds contribution, the expenditure is considered a cash match, and should be verified as such. If the matching funds are to be provided by a third party in cash, the application must include a signed letter from that third party verifying how much cash will be donated and when it will be donated. Verification of funds donated outside the proposed time period of the cooperative agreement will not be accepted. If the matching funds are to be provided by a third party in-kind donation, the application must include a signed letter from the third party verifying the goods or services to be donated, when the goods and services will be donated, and the value of the

goods or services. Verification of in-kind contributions donated outside the proposed time period of the cooperative agreement will not be accepted. Verification of in-kind contributions that are over-valued will not be accepted. The valuation process for the in-kind funds does not need to be included in the application, especially if it is lengthy, but the applicant must be able to demonstrate how the valuation was achieved at the time of notification of tentative selection for the award. If the applicant cannot satisfactorily demonstrate how the valuation was determined, the award may not be made.

If matching funds are in cash, they must be spent on goods and services that are eligible expenditures for this cooperative agreement program. If matching funds are in-kind contributions, the donated goods or services must be considered eligible expenditures for this program. The matching funds must be spent or donated during the agreement period. (*See* 7 CFR parts 3015 and 3019 for funds use eligibility rules.)

If acceptable verification for all proposed matching funds is missing from the application by the application deadline, the application will receive zero points for the Funding Match part of the evaluation criteria.

C. Submission Dates and Times

Application Deadline Date: September 18, 2009.

Explanation of Deadlines: Paper applications must be received by the deadline date (*see* Section IV.F. for the address). Final electronic applications must be received by *http://www.grants.gov* by the deadline date. If your application does not meet the deadline above, it will not be considered for funding. You will be notified whether or not your application was received on time.

D. Intergovernmental Review of Applications

Executive Order 12372, Intergovernmental Review of Federal Programs, does not apply to this program.

E. Funding Restrictions

Funding restrictions apply to both Federal funds and matching funds. Funds may only be used for activities related to determining the economic impact of cooperatives.

No funds made available under this solicitation shall be used to:

1. Pay for the preparation of the cooperative agreement application;

2. Pay expenses not directly related to the funded project;

3. Fund political or lobbying activities;

4. Fund any activities prohibited by 7 CFR parts 3015 or 3019;

5. Duplicate current services or replace or substitute support previously provided;

6. Pay costs of the project incurred prior to the date of agreement approval; or

7. Pay any judgment or debt owed to the United States.

F. Other Submission Requirements

You may submit your paper application for a cooperative agreement to USDA Rural Development's Cooperative Programs, Attn: Cooperative Research, Mail STOP 3250, Room 4016–South, 1400 Independence Ave., SW., Washington, DC 20250–3250. The phone number that should be used for FedEx packages is (202) 720–7558. You may also choose to submit your application electronically at *http://www.grants.gov.* Final applications may not be submitted by electronic mail, facsimile, or by hand-delivery. Any application submission in a non-electronic format must contain all required documents in one envelope.

V. Application Review Information

A. Criteria

All eligible and complete applications will be evaluated based on the following criteria and maximum point allowances. Failure to address any one of the following criteria by the application deadline will result in a determination of incomplete and the application will not be considered for funding. The total points available for the set of criteria are 100.

1. *Relevance of the project proposal (30 points).* Proposals will be evaluated on how directly they address the stated objective of demonstrating economic impact of all types of cooperatives in the United States. Factors to be weighed by evaluators in scoring a proposal's relevance will include the:

- Definition of clear and objective measures of impact;
- Definition of specific measurement strategies for obtaining impact measures from each major cooperative sector and each category of persons impacted by cooperatives; and
- Description of sound data collection and analysis methodology.

2. *Quality of Workplan (30 points).* The quality evaluation criterion will be based on whether the proposal outlines a sound plan of work that will meet the objectives in a timely and cost-efficient manner. Factors to be weighed by evaluators in scoring a proposal's workplan will include:

- How well the steps for carrying out the work are defined;
- The logic of the sequence of proposed steps and the likelihood they will achieve their intended result;
- The establishment of clear benchmarks and timetables to measure the progress of the project;
- The detail, accuracy, and reasonableness of the project's proposed budget; and
- The ability to replicate measures from the FY 2006, FY 2007 and FY 2008 funding cycles.

3. *Quality of personnel and management plan (20 points).* The quality of the management plan and the personnel involved in carrying out the proposed project will evaluate the capabilities of the individuals and institutions to implement the work plan in an effective manner. Factors to be weighed by evaluators in scoring a proposal's personnel and management plan will include the:

- Experience of project leaders and the lead institution in managing complex research projects;
- Demonstration of a clear understanding of business models and general economic development;
- Management controls, progress measurements, and reporting systems within a structured project management plan; and
- Experience and relevant skills of researchers, consultants, and subcontractors assigned to carry out specific roles in the project.

4. *Cooperative and academic community support (20 points).* Points will be awarded for having support for the proposal from both cooperative and academic communities. This support should be evidenced by either contribution of resources or by statements from representatives about the value of the proposed research to their organizations or communities.

B. Review and Selection Process

Each application will be initially reviewed by Rural Development personnel for eligibility and to determine whether all required elements are complete. A list of required elements follows:

- SF–424
- SF–424A
- SF–424B
- Title Page
- Table of Contents
- Executive Summary
- Applicant Eligibility Discussion
- Purpose Eligibility Discussion
- Project Title

- Information Sheet
- Goals of the Project
- Work Plan
- Proposal Evaluation Criterion 1
- Proposal Evaluation Criterion 2
- Proposal Evaluation Criterion 3
- Proposal Evaluation Criterion 4
- Certification of Judgment
- Verification of any Matching Funds

Any incomplete or ineligible applications will not be further evaluated or considered for funding.

All eligible and complete proposals will be evaluated by a team of at least three reviewers based on criteria 1 through 4 described in paragraph A of this section. Reviewers will represent the Rural Development broad mission area, and will include at least three employees of USDA.

Once the scores for criteria 1 through 4 have been independently completed by the three reviewers, the scores will be used to rank the proposals. If the three reviewers rank the best proposal differently then, with the aid of a facilitator, the three reviewers will develop a consensus ranking. If the three reviewers cannot reach a consensus, two additional reviewers will review the proposals and be added to the rankings. A final ranking will be obtained based on the consensus rankings of the three member review panel, or, if appointed, the average of the five reviewers' rankings. Final award recommendation will be sent to the Under Secretary for Rural Development for final selection concurrence.

After the award selection is made, all applicants will be notified of the status of their applications by mail. The awardee must meet all statutory and regulatory program requirements in order to receive the award. In the event that an awardee cannot meet the requirements, the award will be withdrawn.

C. Anticipated Announcement and Award Dates

Award Date: The announcement of award selection is expected to occur on or about September 25, 2009.

VI. Award Administration Information

A. Award Notices

The successful applicant will receive a notification of tentative selection for funding from USDA Rural Development. The applicant must sign a mutually agreed to cooperative agreement and comply with all applicable statutes, regulations, and this notice before the award will receive final approval.

Unsuccessful applicants will receive notification, including mediation procedures and appeal rights, by mail.

B. Administrative and National Policy Requirements

This award is subject to 7 CFR parts 3015 and 3019. These regulations may be accessed at *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html#page1*.

The following additional documentation requirements apply to the awardee selected for this program:

- Agency Approved Cooperative Agreement
- Form RD 1940–1, ''Request for Obligation of Funds''
- Form AD–1047, ''Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions''
- Form AD–1048, ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions''
- Form AD–1049, ''Certification Regarding a Drug-Free Workplace Requirements (Grants)''
- Form RD 400–1, ''Equal Opportunity Agreement''
- Form RD 400–4, ''Assurance Agreement''

Additional information on these requirements can be found at *http://www.rurdev.usda.gov/rbs/coops/reic.htm*.

Reporting Requirements: You must provide USDA Rural Development with an original or an electronic copy that includes all required signatures of the following reports. The reports should be submitted to the Agency contact listed on your Cooperative Agreement. Failure to submit satisfactory reports on time may result in suspension or termination of your award.

1. *Form SF–269 or SF–269A.* A ''Financial Status Report,'' listing expenditures according to agreed upon budget categories, on a quarterly basis. Reporting periods end each December 31, March 31, June 30, and September 30. Reports are due 30 days after the reporting period ends.

2. Quarterly performance reports that compare accomplishments to the objectives stated in the proposal. Identify all tasks completed to date and provide documentation supporting the reported results. If the original schedule provided in the workplan is not being met, the report should discuss the problems or delays that may affect completion of the project. Objectives for the next reporting period should be listed. Compliance with any special condition on the use of award funds should be discussed. Reporting periods end each December 31, March 31, June 30, and September 30. Reports are due 30 days after the reporting period ends. Supporting documentation must also be submitted for completed tasks. The supporting documentation for completed tasks include, but are not limited to, questionnaire or interview guides, publications of research findings, summaries of data collected, and any other documentation related to how funds were spent.

3. Final Project performance reports that compare accomplishments to the objectives stated in the proposal. Identify all tasks completed and provide documentation supporting the reported results. If the original schedule provided in the workplan was not met, the report must discuss the problems or delays that affected completion of the project. Compliance with any special condition on the use of award funds should be discussed. Supporting documentation for completed tasks must also be submitted. The supporting documentation for completed tasks includes, but is not limited to, publications of research findings, summaries of data collected, documentation of data and software delivered to USDA Rural Development, and any other documentation related to how funds were spent. The final performance report is due within 90 days of the completion of the project.

VII. Agency Contacts

For general questions about this announcement and for program technical assistance, please contact the USDA Rural Development's Cooperative Programs, Mail STOP 3250, Room 4016–South, 1400 Independence Avenue, SW., Washington, DC 20250–3250, *Telephone:* (202) 720–8460 (*TDD:* (800) 877–8339 Federal Information Relay Service), *e-mail: cpgrants@wdc.usda.gov.*

VIII. Non-Discrimination Statement

USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, *etc.*) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250–9410, or call (800) 795–3272 (voice), or (202) 720–6382 (TDD). ''USDA is an equal

opportunity provider, employer, and lender.''

Dated: August 14, 2009.

Judith A. Canales,

Administrator, Rural Business-Cooperative Service.

[FR Doc. E9–20348 Filed 8–24–09; 8:45 am]

BILLING CODE 3410–XY–P

ARCTIC RESEARCH COMMISSION

Arctic Research Commission; Meeting

Notice is hereby given that the U.S. Arctic Research Commission will hold its 90th meeting in Kotzebue, AK on September 14–16, 2009. The Business Session, open to the public, will convene at 9:30 a.m. Monday, September 14, 2009 in Kotzebue, AK. An Executive Session will follow adjournment of the Business Session.

The Agenda items include:

(1) Call to order and approval of the Agenda.

(2) Approval of the Minutes of the 89th Meeting.

(3) Commissioners and Staff Reports.

(4) Discussion of Arctic research related activities in and around Kotzebue.

The focus of the meeting will be reports and updates on programs and research projects affecting the Arctic.

Any person planning to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs.

Contact Person for More Information: John Farrell, Executive Director, U.S. Arctic Research Commission, 703–525–0111 or TDD 703–306–0090.

John Farrell,

Executive Director.

[FR Doc. E9–20185 Filed 8–24–09; 8:45 am]

BILLING CODE 7555–01–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of a Public Meeting of the State Advisory Committee Chairs of the Southern Region of the U.S. Commission on Civil Rights

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a meeting of the State Advisory Committee Chairs of the Southern Region of the Commission will convene on Wednesday, September 9, 2009 at 1 p.m. and adjourn at approximately 7 p.m. at Atlanta Marriott Marquis, 265 Peachtree Center Ave., Atlanta, Georgia. The purpose of the meeting is to discuss a region wide fact-finding activity for 2010.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by October 9, 2009. The address is U.S. Commission on Civil Rights, 61 Forsyth St., SW., Suite 18T40, Atlanta, GA 30303. Persons wishing to e-mail their comments, or to present their comments verbally at the meeting, or who desire additional information should contact Peter Minarik, Regional Director, Southern Regional Office, at (404) 562–7000 or 800–877–8339 for individuals who are deaf, hearing impaired, and/or have speech disabilities or by e-mail to *pminarik@usccr.gov.*

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Southern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov,* or to contact the Southern Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, August 19, 2009.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. E9–20361 Filed 8–24–09; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Georgia Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a meeting of the Georgia Advisory Committee (Committee) to the Commission will convene on Tuesday, September 8, 2009 at 4 p.m. and adjourn at approximately 7 p.m. at 3593 Hemphill Street, College Park, Georgia. The purpose of the meeting is to discuss the Committee's report on fair housing enforcement and future Committee activities.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by October 8, 2009. The address is U.S. Commission on Civil Rights, 61 Forsyth St., SW., Suite 18T40, Atlanta, GA 30303. Persons wishing to e-mail their comments, or to present their comments verbally at the meeting, or who desire additional information should contact Peter Minarik, Regional Director, Southern Regional Office, at (404) 562–7000 or 800–877–8339 for individuals who are deaf, hearing impaired, and/or have speech disabilities or by e-mail to *pminarik@usccr.gov.*

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Southern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov*, or to contact the Southern Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, August 19, 2009.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. E9–20362 Filed 8–24–09; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of meeting.

DATE AND TIME: Thursday, September 3, 2009; 11:30 a.m. EDT.

PLACE: Via Teleconference, Public Dial In—1–800–597–7623, Conference ID # 26317162.

Meeting Agenda

This meeting is open to the public.

I. Approval of Agenda

II. Staff Director's Report

- Update on Building Improvements.

III. State Advisory Committee Issues

- Arizona SAC;
- Hawaii SAC;
- Michigan SAC;
- Utah SAC;
- Indiana SAC;
- Nebraska SAC;
- South Dakota SAC.

IV. Program Planning

- Update on National Civil Rights Conference.

V. Adjourn

CONTACT PERSON FOR FURTHER INFORMATION: Lenore Ostrowsky, Acting Chief, Public Affairs Unit (202) 376–8582. TDD: (202) 376–8116.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Pamela Dunston at least seven days prior to the meeting at 202–376–8105. TDD: (202) 376–8116.

Dated: August 21, 2009.

David Blackwood,

General Counsel.

[FR Doc. E9–20613 Filed 8–21–09; 4:15 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

Proposed Information Collection; Comment Request; Procedures for Importation of Supplies for Use in Emergency Relief Work

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before *October 26, 2009.*

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Hardeep K. Josan, Office of the Chief Counsel for Import Administration, Room 3622, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230; telephone: 202–482–0835; *hardeep.josan@mail.doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The regulations (19 CFR 358.101 through 358.104) provide procedures for requesting the Secretary of Commerce to permit the importation of supplies, such as food, clothing, and medical, surgical, and other supplies, for use in emergency relief work free of antidumping and countervailing duties.

Authority: 19 U.S.C. 1318(a). There are no proposed changes to this information collection.

II. Method of Collection

Three copies of the request must be submitted in writing to the Secretary of Commerce, Attention: Import Administration, Central Records Unit, Room 1870, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

III. Data

OMB Control Number: 0625–0256.

Form Number(s): None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 5.

Estimated Time per Response: 2.

Estimated Total Annual Burden Hours: 10.

Estimated Total Annual Cost to Public: $143.20.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 19, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–20346 Filed 8–24–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–954, A–201–837]

Certain Magnesia Carbon Bricks from the People's Republic of China and Mexico: Initiation of Antidumping Duty Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 25, 2009.

FOR FURTHER INFORMATION CONTACT: Terre Keaton Stefanova at (202) 482–1280 or David Goldberger at (202) 482–4136 (Mexico), AD/CVD Operations, Office 2; Jerry Huang at (202) 482–4047 or Paul Walker at (202) 482–0413 (China), AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petitions

On July 29, 2009, the Department of Commerce (the ''Department'') received petitions concerning imports of certain magnesia carbon bricks (''magnesia carbon bricks'') from the People's Republic of China (''PRC'') and Mexico filed in proper form by Resco Products, Inc. (''Petitioner''). *See* Petition for the Imposition of Antidumping Duties: Certain Magnesia Carbon Bricks from the People's Republic of China, dated July 29, 2009 (''AD PRC Petition''); Petition for the Imposition of Antidumping Duties: Certain Magnesia Carbon Bricks from Mexico, dated July 29, 2009 (''AD Mexico Petition'')(collectively, the ''Petitions''). On August 4 and 12, 2009, the Department issued additional requests for information and clarification of certain areas of the Petitions. Based on the Department's requests, Petitioner timely filed additional information pertaining to the Petitions on August 10 and 14, 2009 (hereinafter, ''Supplement to the AD PRC Petition,'' and ''Supplement to the AD Mexico Petition,'' both dated August 10, 2009, and ''Second Supplement to the AD PRC Petition,'' and ''Second Supplement to the AD Mexico Petition,''

both dated August 14, 2009). The period of investigation (''POI'') for the PRC is January 1, 2009, through June 30, 2009. The POI for Mexico is July 1, 2008, through June 30, 2009. *See* 19 CFR 351.204(b)(1).

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the ''Act''), Petitioner alleges that imports of magnesia carbon bricks from the PRC and Mexico are being, or are likely to be, sold in the United States at less than fair value, within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States.

The Department finds that Petitioner filed the Petitions on behalf of the domestic industry because Petitioner is an interested party, as defined in section 771(9)(C) of the Act, and has demonstrated sufficient industry support with respect to the antidumping duty investigations that Petitioner is requesting the Department to initiate (*see* ''Determination of Industry Support for the Petitions'' section below).

Scope of Investigations

The products covered by these investigations are magnesia carbon bricks from the PRC and Mexico. For a full description of the scope of the investigations, please see the ''Scope of Investigations,'' in Appendix I of this notice.

Comments on Scope of Investigations

During our review of the Petitions, we discussed the scope with Petitioner to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments by September 8, 2009.[1] Comments should be addressed to Import Administration's APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determinations.

[1] September 8, 2009, is the first business day after twenty calendar days from the signature date of this notice.

Comments on Product Characteristics for Antidumping Duty Questionnaires

We are requesting comments from interested parties regarding the appropriate physical characteristics of magnesia carbon bricks to be reported in response to the Department's antidumping questionnaires. This information will be used to identify the key physical characteristics of the merchandise under consideration in order to more accurately report the relevant factors and costs of production, as well as to develop appropriate product comparison criteria.

Interested parties may provide information or comments that they believe are relevant to the development of an accurate listing of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as: 1) general product characteristics; and 2) the product comparison criteria. We note that it is not always appropriate to use all product characteristics as product comparison criteria. We base product comparison criteria on meaningful commercial differences among products. In other words, while there may be some physical product characteristics utilized by manufacturers to describe magnesia carbon bricks, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in product matching. Generally, the Department attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the antidumping duty questionnaires, we must receive comments at the above–referenced address by September 8, 2009. Additionally, rebuttal comments must be received by September 15, 2009.

Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (''ITC''), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (*see* section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. *See USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (Ct. Int'l Trade 2001), citing *Algoma Steel Corp., Ltd. v. United States*, 688 F. Supp. 639, 644 (Ct. Int'l Trade 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989), *cert. denied* 492 U.S. 919 (1989).

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, Petitioner does not offer a definition of domestic like product distinct from the scope of the investigations. Based on our analysis of the information submitted on the record, we have determined that magnesia carbon bricks constitute a single domestic like product and we have analyzed industry support in terms

of that domestic like product. For a discussion of the domestic like product analysis in this case, see Antidumping Duty Investigation Initiation Checklist: Magnesia Carbon Bricks from the PRC (''PRC Initiation Checklist'') at Attachment II, Analysis of Industry Support for the Petitions Covering Certain Magnesia Carbon Bricks from the People's Republic of China and Mexico, and Antidumping Duty Investigation Initiation Checklist: Magnesia Carbon Bricks from Mexico (''Mexico Initiation Checklist'') at Attachment II, Analysis of Industry Support for the Petitions Covering Certain Magnesia Carbon Bricks from the People's Republic of China and Mexico, dated concurrently with this notice and on file in the Central Records Unit (''CRU''), Room 1117 of the main Department of Commerce building.

In determining whether Petitioner has standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petitions with reference to the domestic like product as defined in the ''Scope of Investigations'', in Appendix I of this notice. To establish industry support, Petitioner provided its own 2008 production of the domestic like product, as well as the production of the two supporters of the Petitions, and compared this to the estimated total production of the domestic like product for the entire domestic industry. *See* Petitions, at Exhibits 2–4, Supplement to the AD PRC Petition, Supplement to the AD Mexico Petition, dated August 10, 2009, at 8–12, and Exhibits R2–R–6, Second Supplement to the AD PRC Petition, and Second Supplement to the AD Mexico Petition, dated August 14, 2009, at 1–2. Petitioner estimated total 2008 production of the domestic like product based on its own production data, data from the two supporters of the Petitions, and knowledge of the U.S. industry. *See* Petitions, at Exhibits 2–4, Supplement to the AD PRC Petition, Supplement to the AD Mexico Petition, dated August 10, 2009, at 8–12, and Exhibits R2–R–6, Second Supplement to the AD PRC Petition, and Second Supplement to the AD Mexico Petition, dated August 14, 2009, at 1–2; *see also* PRC Initiation Checklist at Attachment II, and Mexico Initiation Checklist at Attachment II.

Our review of the data provided in the Petitions, supplemental submissions, and other information readily available to the Department indicates that Petitioner has established industry support. First, the Petitions established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.*, polling). *See* section 732(c)(4)(D) of the Act; *see also* PRC Initiation Checklist at Attachment II, and Mexico Initiation Checklist at Attachment II. Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petitions account for at least 25 percent of the total production of the domestic like product. *See* PRC Initiation Checklist at Attachment II, and Mexico Initiation Checklist at Attachment II. Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions. Accordingly, the Department determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. *See id.*

The Department finds that Petitioner filed the Petitions on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and it has demonstrated sufficient industry support with respect to the antidumping duty investigations that it is requesting the Department initiate. *See id.*

Allegations and Evidence of Material Injury and Causation

Petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value (''NV''). In addition, Petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.

Petitioner contends that the industry's injured condition is illustrated by reduced market share, underselling and price depressing and suppressing effects, increased import penetration, lost sales and revenue, reduced production, reduced capacity utilization, reduced shipments, reduced employment, and overall poor financial performance. We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See* PRC Initiation Checklist at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Petitions Covering Certain Magnesia Carbon Bricks from the People's Republic of China and Mexico, and Mexico Initiation Checklist at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Petitions Covering Certain Magnesia Carbon Bricks from the People's Republic of China and Mexico.

Allegations of Sales at Less Than Fair Value

The following is a description of the allegations of sales at less than fair value upon which the Department based its decision to initiate these investigations of imports of magnesia carbon bricks from the PRC and Mexico. The sources of data for the deductions and adjustments relating to the U.S. price, the factors of production (for the PRC) and constructed value (''CV'') (for Mexico) are also discussed in the country–specific initiation checklists. *See* PRC Initiation Checklist and Mexico Initiation Checklist.

U.S. Price

The PRC

For the PRC, Petitioner calculated export price (''EP'') based on documentation of actual sales and offers for sale obtained from a confidential source. *See* PRC Initiation Checklist; *see also* AD PRC Petition at Exhibit 11, and Second Supplement to the AD PRC Petition, dated August 14, 2009, at 4. Petitioner made adjustments for distributor mark–ups, international freight and U.S. movement expenses. *See* PRC Initiation Checklist; *see also* Second Supplement to the AD PRC Petition, at Exhibit R–11.

Mexico

For Mexico, Petitioner based U.S. price on POI prices of magnesia carbon bricks produced by the Mexican manufacturer RHI–Refmex S.A. de C.V. (''RHI–Refmex''). Petitioner substantiated the U.S. prices used with affidavits from persons who obtained the information. Petitioner believes that these prices include selling expenses incurred by RHI–Refmex's U.S. affiliate but conservatively assumed such expenses to be zero in its calculation of net U.S. price. Petitioner deducted, where appropriate, freight expenses (U.S. inland freight), but made no other adjustments. *See* Mexico Initiation Checklist; *see also* AD Mexico Petition

at 15, Supplement to the AD Mexico Petition, at 21 and Exhibits R–8, R–10 and R–11, and Second Supplement to the AD Mexico Petition, at 3.

Normal Value

The PRC

Petitioner states that the PRC is a non–market economy (''NME'') country and no determination to the contrary has been made by the Department. *See* AD PRC Petition, at 14. In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for the PRC has not been revoked by the Department and, therefore, remains in effect for purposes of the initiation of this investigation. Accordingly, the NV of the product for the PRC investigation is appropriately based on factors of production valued in a surrogate market–economy country in accordance with section 773(c) of the Act. In the course of the PRC investigation, all parties, including the public, will have the opportunity to provide relevant information related to the issue of the PRC's NME status and the granting of separate rates to individual exporters.

Petitioner contends that India is the appropriate surrogate country for the PRC because: 1) it is at a level of economic development comparable to that of the PRC; and 2) it is a significant producer of comparable merchandise; and 3) information required to calculate unit factor costs and financial ratios is readily available. *See* AD PRC Petition at 14–16, and Exhibit 10. Based on the information provided by Petitioner, we believe that it is appropriate to use India as a surrogate country for initiation purposes. After initiation of the investigation, interested parties will have the opportunity to submit comments regarding surrogate country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value factors of production within 40 days after the date of publication of the preliminary determination.

Petitioner calculated the NV and dumping margins using the Department's NME methodology as required by 19 CFR 351.202(b)(7)(i)(C) and 19 CFR 351.408. Petitioner calculated NV based on its own consumption rates for producing magnesia carbon bricks in 2008. *See* AD PRC Petition at 17, and Exhibit 12. In calculating NV, Petitioner based the quantity of each of the inputs used to manufacture and pack magnesia carbon bricks in the PRC on its own industry knowledge and production experience during the POI. *See* AD PRC Petition at 17, and Exhibit 12. Petitioner states that the actual usage rates of the foreign manufacturers of magnesia carbon bricks are not reasonably available; however, Petitioner notes that to the best of Petitioner's knowledge, the production of magnesia carbon bricks in China relies on similar basic manufacturing processes as in the United States. *See* AD PRC Petition at 17.

Petitioner determined the consumption quantities of all raw materials and packing materials based on its own production experience. *See* AD PRC Petition at 17, and Exhibit 12. Petitioner valued the factors of production based on reasonably available, public surrogate country data, specifically, Indian import statistics from the World Trade Atlas (''WTA''). *See* Supplement to the AD PRC Petition, at Exhibit R–8. Petitioner excluded from these import statistics imports from countries previously determined by the Department to be NME countries and from Indonesia, the Republic of Korea, and Thailand as the Department has previously excluded prices from these countries because they maintain broadly available, non–industry-specific export subsidies. *See id.* In addition, the Petitioner made currency conversions, where necessary, based on the POI–average rupee/U.S. dollar exchange rate, as reported on the Department's website. *See* Supplement to the AD PRC Petition, at 16 and Exhibit R–8. Petitioner determined labor costs using the labor consumption, in hours, derived from its own experience. *See* AD PRC Petition at Exhibit 12. Petitioner valued labor costs using the Department's NME Wage Rate for the PRC at *http://ia.ita.doc.gov/wages/05wages/05wages–051608.html*. *See* Supplement to the AD PRC Petition, at Exhibit R–8. For purposes of initiation, the Department determines that the surrogate values used by Petitioner are reasonably available and, thus, acceptable for purposes of initiation.

Petitioner determined electricity costs using the electricity consumption, in kilowatt hours, derived from its own experience. *See* AD PRC Petition at Exhibit 12. Petitioner valued electricity using the Indian electricity rate reported by the Central Electric Authority of the Government of India. *See* Supplement to the AD PRC Petition, at 16 and Exhibit R–8.

Petitioner determined natural gas costs using the natural gas consumption derived from its own experience. *See* AD PRC Petition at Exhibit 12. Petitioner valued natural gas using Indian import statistics from WTA. *See* Supplement to the AD PRC Petition, at Exhibit R–8.

Petitioner based factory overhead, selling, general and administrative (''SG&A''), and profit on data from IFGL Refractories Ltd. (''IFGL''), a producer of refractory products, for the fiscal year April 2007 through March 2008. *See* AD PRC Petition at Exhibit 13. Petitioner states that, as a manufacturer of non–subject products within the same general category of merchandise as magnesia carbon bricks, IFGL's main operation in India can be considered a reasonable surrogate. *See* Supplement to the AD PRC Petition, at 17–18. Therefore, for purposes of the initiation, the Department finds Petitioner's use of IFGL's unconsolidated financial ratios appropriate.

Mexico

Petitioner calculated NV for magnesia carbon bricks using CV because Petitioner was unable to obtain home market or third country prices. *See* AD Mexico Petition at 13.

Pursuant to section 773(e) of the Act, CV consists of the cost of manufacturing (''COM''), SG&A expenses, packing expenses, and profit. In calculating COM and packing, Petitioner based the quantity of each of the inputs used to manufacture and pack magnesia carbon bricks in Mexico on its own production experience during 2008. *See* AD Mexico Petition at 14, and Exhibits 9 and 11, Supplement to the AD Mexico Petition, at Exhibit R–9, and Second Supplement to the AD Mexico Petition, at Exhibit R–14. Petitioner notes that, to the best of its knowledge, the magnesia carbon bricks manufacturing process in Mexico is very similar to its magnesia carbon bricks manufacturing process. Accordingly, Petitioner states that it is reasonable to estimate the Mexican producer's usage rates based on its own usage rates experienced in producing magnesia carbon bricks. Petitioner also states that certain ''brands'' (*i.e.*, models) of RHI–Refmex's magnesia carbon bricks are identical or very similar to its corresponding brands in terms of quantity and type of raw materials used, energy consumed, and the composition of the finished product. *See* AD Mexico Petition at 14 and 15, and Supplement to the AD Mexico Petition, at 14 and Exhibit R–9.

Petitioner multiplied the usage quantities of the inputs used to manufacture and pack magnesia carbon bricks by the Mexican values of those inputs based on publicly available data. *See* AD Mexico Petition, at 15 and Exhibit 10, Supplement to the AD Mexico Petition, at Exhibit R–8, and

Second Supplement to the AD Mexico Petition, at Exhibit R–14.

Raw materials (*e.g.*, magnesite) are significant inputs used in the production of magnesia carbon bricks. Petitioner determined the consumption quantities of all raw materials and packing materials based on its own production experience. *See* AD Mexico Petition, at 14, and Exhibits 9 and 11, and Supplement to the AD Mexico Petition, at Exhibit R–9. Petitioner valued all raw materials and packing materials using Mexican import statistics as reflected in the WTA data for the period from June 2008 through May 2009, the most recent data available. Petitioner excluded from these import statistics imports from countries previously determined by the Department to be NME countries and from India, Indonesia, the Republic of Korea, and Thailand, as the Department has previously excluded prices from these countries because they maintain broadly available, non–industry-specific export subsidies. *See* AD Mexico Petition at Exhibit 10, and Supplement to the AD Mexico Petition, at Exhibit R–8.

Petitioner determined labor costs using the labor consumption in hours derived from its own experience. Petitioner relied on Mexican wage rate data available from the Import Administration website at *http://ia.ita.doc.gov/wages* to determine the average wage rate in Mexico. *See* AD Mexico Petition at 15, and Supplement to the AD Mexico Petition, at 17.

Petitioner determined the costs of electricity and natural gas using consumption amounts derived from its own experience. Petitioner valued electricity using the POI Mexican electricity rates for medium–sized enterprises reported by the Mexico Secretary of Energy at *http://www.sener.gob.mx*. Petitioner converted the Mexican electricity rates into U.S. dollars using the Department's POI exchange rates. Petitioner valued natural gas using Mexican import statistics as reflected in the WTA data for the period from June 2008 through May 2009, the most recent data available. *See* AD Mexico Petition at Exhibit 10, and Supplement to the AD Mexico Petition, at 18 and Exhibit R–8.

To calculate factory overhead, SG&A expenses, and profit, Petitioner relied on the financial statements of a Mexican producer of ceramic products, Grupo Lamosa, S.A.B. de C.V., a company that produces products in the same general category of merchandise as magnesia carbon bricks. *See* Supplement to the AD Mexico Petition, at Exhibit R–8, and Second Supplement to the AD Mexico Petition, at Exhibit R–13. *See also* Mexico Initiation Checklist.

Fair–Value Comparisons

Based on the data provided by Petitioner, there is reason to believe that imports of magnesia carbon bricks from the PRC and Mexico are being, or are likely to be, sold in the United States at less than fair value. Based on a comparison of U.S. prices and NV calculated in accordance with section 773(c) of the Act, the estimated dumping margins for magnesia carbon bricks from the PRC range from 112 percent to 349 percent. *See* PRC Initiation Checklist. Based on a comparison of U.S. price and CV calculated in accordance with section 773(a)(4) of the Act, the estimated dumping margins for magnesia carbon bricks from Mexico range from 153 percent to 295 percent. *See* Mexico Initiation Checklist; *see also* Supplement to the AD Mexico Petition, at Exhibit R–10, and Second Supplement to the AD Mexico Petition, at Exhibit R–14 and R–15.

Initiation of Antidumping Investigations

Based upon the examination of the Petitions on magnesia carbon bricks from the PRC and Mexico, the Department finds that the Petitions meet the requirements of section 732 of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of magnesia carbon bricks from the PRC and Mexico are being, or are likely to be, sold in the United States at less than fair value. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 140 days after the date of this initiation.

Targeted–Dumping Allegations

On December 10, 2008, the Department issued an interim final rule for the purpose of withdrawing 19 CFR 351.414(f) and (g), the regulatory provisions governing the targeted-dumping analysis in antidumping duty investigations, and the corresponding regulation governing the deadline for targeted–dumping allegations, 19 CFR 351.301(d)(5). *See Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Antidumping Duty Investigations*, 73 FR 74930 (December 10, 2008). The Department stated that ''{w}ithdrawal will allow the Department to exercise the discretion intended by the statute and, thereby, develop a practice that will allow interested parties to pursue all statutory avenues of relief in this area.'' *See id.* at 74931.

In order to accomplish this objective, if any interested party wishes to make a targeted- dumping allegation in any of these investigations pursuant to section 777A(d)(1)(B) of the Act, such allegations are due no later than 45 days before the scheduled date of the country–specific preliminary determination.

Respondent Selection

The PRC

For this investigation, the Department will request quantity and value information from all known exporters and producers identified with complete contact information in the AD PRC Petition. The quantity and value data received from NME exporters/producers will be used as the basis to select the mandatory respondents.

The Department requires that the respondents submit a response to both the quantity and value questionnaire and the separate–rate application by the respective deadlines in order to receive consideration for separate–rate status. *See Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Initiation of Antidumping Duty Investigation*, 73 FR 10221, 10225 (February 26, 2008); *Initiation of Antidumping Duty Investigation: Certain Artist Canvas From the People's Republic of China*, 70 FR 21996, 21999 (April 28, 2005). The Department will post the quantity and value questionnaire along with the filing instructions on the Import Administration website at *http://ia.ita.doc.gov/ia–highlights-and–news.html*, and a response to the quantity and value questionnaire is due no later than September 10, 2009. Also, the Department will send the quantity and value questionnaire to those PRC companies identified in the AD PRC Petition, at Exhibit 9.

Mexico

For this investigation, the Department intends to select respondents based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports under the Harmonized Tariff Schedule of the United States (''HTSUS'') numbers 6902.10.10.00 and 6902.10.50.00, the two HTSUS categories most specific to the subject merchandise, during the POI. We intend to release the CBP data under Administrative Protective Order (''APO'') to all parties with access to information protected by APO within five days of publication of this **Federal Register** notice and make our decision regarding respondent selection within

20 days of publication of this notice. The Department invites comments regarding the CBP data and respondent selection within ten days of publication of this **Federal Register** notice.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Instructions for filing such applications may be found on the Department's website at *http://ia.ita.doc.gov/apo*.

Separate Rates

In order to obtain separate–rate status in NME investigations, exporters and producers must submit a separate–rate status application. *See* our practice, described in Policy Bulletin 05.1: Separate–Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non–Market Economy Countries, dated April 5, 2005 (''Separate Rates and Combination Rates Bulletin''), available on the Department's website at *http://ia.ita.doc.gov/policy/bull05–1.pdf*. Based on our experience in processing the separate–rate applications in previous antidumping duty investigations, we have modified the application for this investigation to make it more administrable and easier for applicants to complete. *See*, *e.g.*, *Initiation of Antidumping Duty Investigation: Certain New Pneumatic Off–the-Road Tires From the People's Republic of China*, 72 FR 43591, 43594–95 (August 6, 2007). The specific requirements for submitting the separate–rate application in this investigation are outlined in detail in the application itself, which will be available on the Department's website at *http://ia.ita.doc.gov/ia–highlights-and–news.html* on the date of publication of this initiation notice in the **Federal Register**. The separate–rate application will be due 60 days after publication of this initiation notice. For exporters and producers who submit a separate–rate status application and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for consideration for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents. As noted in the ''Respondent Selection'' section above, the Department requires that respondents submit a response to both the quantity and value questionnaire and the separate rate application by the respective deadlines in order to receive consideration for separate–rate status. The quantity and value questionnaire will be available on the Department's website at *http://ia.ita.doc.gov/ia–highlights-and–news.html* on the date of the publication of this initiation notice in the **Federal Register**.

Use of Combination Rates in an NME Investigation

The Department will calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. The Separate Rates and Combination Rates Bulletin states:

> {w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non–investigated firms receiving the weighted–average of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash–deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question *and* produced by a firm that supplied the exporter during the period of investigation.

See Separate Rates and Combination Rates Bulletin at 6 (emphasis added).

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public versions of the Petitions have been provided to the representatives of the Governments of the PRC and Mexico. Because of the large number of producers/exporters identified in the AD PRC Petition, the Department considers the service of the public version of the AD PRC Petition to the foreign producers/exporters satisfied by the delivery of the public version to the Government of the PRC, consistent with 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiations, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, no later than September 14, 2009, whether there is a reasonable indication that imports of magnesia carbon bricks from the PRC and Mexico are materially injuring, or threatening material injury to a U.S. industry. A negative ITC determination with respect to any country will result in the investigation being terminated for that country; otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: August 18, 2009.

Carole Showers,

Acting Deputy Assistant Secretary for Policy and Negotiations.

Appendix I

Scope of the Investigations

Imports covered by this petition consist of certain chemically bonded (resin or pitch), magnesia carbon bricks with a magnesia component of at least 70 percent magnesia (''MgO'') by weight, regardless of the source of raw materials for the MgO, with carbon levels ranging from trace amounts to 30 percent by weight, regardless of enhancements, (for example, magnesia carbon bricks can be enhanced with coating, grinding, tar impregnation or coking, high temperature heat treatments, anti–slip treatments or metal casing) and regardless of whether or not anti–oxidants are present (for example, antioxidants can be added to the mix from trace amounts to 15 percent by weight as various metals, metal alloys, and metal carbides). Certain magnesia carbon bricks that are the subject of this investigation are currently classifiable under subheadings 6902.10.10.00, 6902.10.50.00, 6815.91.00.00, and 6815.99 of the Harmonized Tariff Schedule of the United States (HTSUS). While HTSUS subheadings are provided for convenience and customs purposes, the written description is dispositive.

[FR Doc. E9–20494 Filed 8–24–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–821]

Hot–Rolled Carbon Steel Products from India: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Gayle Longest, AD/CVD Operations,

Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 4014, 14th Street and Constitution Ave., NW, Washington, DC 20230, telephone: (202) 482–3338.

SUPPLEMENTARY INFORMATION:

Background

On February 2, 2009, the U.S. Department of Commerce (''the Department'') published a notice of initiation of the administrative review of the countervailing duty order on hot–rolled carbon steel products from India covering the period January 1, 2008, through December 31, 2008. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 74 FR 5821 (February 2, 2009). The preliminary results are currently due no later than September 2, 2009.

Extension of Time Limit for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested. Section 751(a)(3)(A) of the Act further states that if it is not practicable to complete the review within the time period specified, the administering authority may extend the 245-day period to issue its preliminary results to up to 365 days.

Due to the complexity of the issues in this administrative review, such as the number of programs under review during the POR, we have determined that it is not practicable to complete the preliminary results within the 245-day period. Therefore, in accordance with section 751(a)(3)(A) of the Act, we are extending the time period for issuing the preliminary results of the review by 120 days. The preliminary results are now due no later than December 31, 2009. The final results continue to be due 120 days after publication of the preliminary results.

This notice is issued and published in accordance with section 751(a)(3)(A) of the Act.

Dated: August 19, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–20501 Filed 8–24–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–955]

Certain Magnesia Carbon Bricks from the People's Republic of China: Initiation of Countervailing Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce

DATES: *Effective Date:* August 25, 2009.

FOR FURTHER INFORMATION CONTACT: Justin Neuman, Toni Page, or Nicholas Czajkowski; AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, D.C. 20230; telephone: (202) 482–0486, (202) 482–1398, or (202) 482–1395 respectively.

SUPPLEMENTARY INFORMATION:

The Petitions

On July 29, 2009, the Department of Commerce (the Department) received countervailing duty (CVD) and antidumping (AD) petitions concerning imports of certain magnesia carbon bricks (magnesia carbon bricks) from the People's Republic of China (PRC) filed in proper form by Resco Products, Inc. (Petitioner), domestic producers of magnesia carbon bricks. *See* ''Petition for the Imposition of Countervailing Duties: Certain Magnesia Carbon Bricks from the People's Republic of China'' (CVD PRC Petition). On August 3, 2009, the Department spoke via telephone with petitioner to request additional information and clarification of certain areas of the CVD petition involving countervailable subsidy allegations. *See* Memorandum from Mark Hoadley, Program Manager, AD/CVD Operations, Office 6, to the File, ''CVD Petition for Investigation of Magnesia Carbon Bricks from the People's Republic of China (PRC): Phone Call with Counsel for Petitioner'' dated August 4, 2009. Based on the Department's requests, the Petitioner timely filed additional information on August 7, 2009. On August 4 and 12, 2009, the Department issued additional requests for information and clarification of certain areas of the CVD PRC Petition. Based on the Department's requests, Petitioner timely filed additional information pertaining to the CVD PRC Petition on August 10 and 14, 2009, (hereinafter, Supplement to the CVD PRC Petition dated August 10, 2009 and Second Supplement to the CVD PRC Petition, dated August 14, 2009).

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), Petitioner alleges that producers/exporters of magnesia carbon bricks in the PRC received countervailable subsidies within the meaning of section 701 and 771(5) of the Act, and that imports from these exporters/producers materially injure, or threaten material injury to, an industry in the United States.

The Department finds that Petitioner filed this CVD PRC Petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act, and Petitioner has demonstrated sufficient industry support with respect to the countervailing duty investigation that it is requesting the Department to initiate (see ''Determination of Industry Support for the CVD Petition'' below).

Period of Investigation

The anticipated period of investigation (POI) is calendar year 2008. *See* 19 CFR 351.204(b)(2).

Scope of Investigation

The products covered by this investigation are magnesia carbon bricks from the PRC. For a full description of the scope of the investigation, please see the ''Scope of Investigation'' in Appendix I to this notice.

Comments on Scope of Investigation

During our review of the CVD PRC Petition, we discussed the scope with Petitioner to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the regulations (*See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments by September 8, 2009.[1] Comments should be addressed to Import Administration's APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determinations.

[1] September 8, 2009 is the first business day after twenty calendar days from the signature date of this notice.

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department held consultations with the government of the PRC (hereinafter, the GOC) with respect to the CVD PRC Petition on August 7, 2009. *See* Memorandum to the File, *Countervailing Duty Petitions on Certain Magnesia Carbon Bricks from the People's Republic of China: Consultations with the Government of the People's Republic of China*, on file in the Central Records Unit (CRU), Room 1117 of the main Department of Commerce building.

Determination of Industry Support for the CVD Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The United States International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (see section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. *See USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (Ct. Int'l Trade 2001), citing *Algoma Steel Corp. Ltd. v. United States*, 688 F. Supp. 639, 644 (Ct. Int'l Trade 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989), *cert. denied* 492 U.S. 919 (1989).

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, Petitioner does not offer a definition of domestic like product distinct from the scope of the investigations. Based on our analysis of the information submitted on the record, we have determined that magnesia carbon bricks constitute a single domestic like product and we have analyzed industry support in terms of that domestic like product. For a discussion of the domestic like product analysis in this case, *see* Countervailing Duty Investigation Initiation Checklist: Magnesia Carbon Bricks from the PRC (CVD Initiation Checklist) at Attachment II, Analysis of Industry Support for the Petitions Covering Certain Magnesia Carbon Bricks from the People's Republic of China and Mexico, dated concurrently with this notice and on file in the CRU, Room 1117 of the main Department of Commerce building.

In determining whether Petitioner has standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the CVD PRC Petition with reference to the domestic like product as defined in the ''Scope of Investigations,'' Appendix I of this notice. To establish industry support, Petitioner provided its own 2008 production of the domestic like product, as well as the production of the two supporters of the CVD PRC Petition, and compared this to the estimated total production of the domestic like product for the entire domestic industry. *See* the CVD PRC Petition, at Exhibits 2–4, Supplement to the CVD PRC Petition, dated August 10, 2009, at 8–12, and Exhibits R2–R–6, and Second Supplement to the CVD PRC Petition, dated August 14, 2009, at 1–2. Petitioner estimated total 2008 production of the domestic like product based on its own production data, data from the two supporters of the CVD PRC Petition, and knowledge of the U.S. industry. *See* the CVD PRC Petition, at Exhibits 2–4, Supplement to the CVD PRC Petition, dated August 10, 2009, at 8–12, and Exhibits R2–R–6, and Second Supplement to the CVD PRC Petition, dated August 14, 2009, at 1–2; *see also* CVD Initiation Checklist at Attachment II.

Our review of the data provided in the CVD PRC Petition, the supplemental submissions, and other information readily available to the Department indicates that Petitioner has established industry support. First, the CVD PRC Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.*, polling). *See* section 702(c)(4)(D) of the Act, see also CVD Initiation Checklist at Attachment II. Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the CVD PRC Petition account for at least 25 percent of the total production of the domestic like product. *See* CVD Initiation Checklist at Attachment II. Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the CVD PRC Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the CVD PRC Petition. Accordingly, the Department determines that the CVD PRC Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act. *See id.*

The Department finds that Petitioner filed the CVD PRC Petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and it has demonstrated sufficient industry support with respect to the countervailing investigation that it is requesting the Department to initiate. *See id.*

Injury Test

Because the PRC is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from the PRC

materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

Petitioner alleges that imports of magnesia carbon bricks from the PRC are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the domestic industry producing magnesia carbon bricks. In addition, Petitioner alleges that subsidized imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.

Petitioner contends that the industry's injured condition is illustrated by reduced market share, underselling and price depressing and suppressing effects, increased import penetration, lost sales and revenue, reduced production, reduced capacity utilization, reduced shipments, reduced employment, and overall poor financial performance. We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See* CVD Initiation Checklist at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Petitions Covering Certain Magnesia Carbon Bricks from the People's Republic of China and Mexico.

Initiation of Countervailing Duty Investigation

Section 702(b)(1) of the Act requires the Department to initiate a CVD proceeding whenever an interested party files a CVD petition on behalf of an industry that: (1) alleges the elements necessary for an imposition of a duty under section 701(a) of the Act; and (2) is accompanied by information reasonably available to the petitioners supporting the allegations.

The Department has examined the CVD PRC Petition on magnesia carbon bricks from the PRC and finds that it complies with the requirements of section 702(b)(1) of the Act. Therefore, in accordance with section 702(b)(1) of the Act, we are initiating a CVD investigation to determine whether producers/exporters of magnesia carbon bricks in the PRC receive countervailable subsidies. For a discussion of evidence supporting our initiation determination, *see CVD Initiation Checklist*.

We are including in our investigation the following programs alleged in the CVD PRC Petition to provide countervailable subsidies to producers/exporters of the subject merchandise:

A. Provision of Inputs for Less than Adequate Remuneration (LTAR)
   1. Provision of Land–Use Rights to State–Owned Enterprises (SOEs) for LTAR
   2. Provision of Electricity at LTAR
B. Export Restraints of Raw Materials
C. Tax Benefit Programs
   1. Two Free/Three Half Program for Foreign–Invested Enterprises (FIEs)
   2. Income Tax Reductions for Export–Oriented FIEs
   3. Preferential Income Tax Policy for Enterprises in the Northeast Region
   4. Forgiveness of Tax Arrears for Enterprises in the Old Industrial Bases of Northeast China
   5. Location–Based Income Tax Reduction Programs for FIEs
   6. Local Income Tax Exemption and Reduction Programs for ''Productive'' FIEs
   7. Domestic Preference Tax Benefits
   a. Income Tax Credits for Domestically Owned Companies Purchasing Domestically Produced Equipment
   b. Income Tax Credits for FIEs Purchasing Domestically Produced Equipment
   c. VAT Rebates on Purchases of Domestically Produced Equipment
   8. Preferential Tax Programs for Enterprises Recognized as High or New Technology Enterprises
D. Northeast Revitalization Program and Related Provincial Policies
   a. E. Direct Grants
   1. The State Key Technology Renovation Project Fund
   2. Famous Brands Programs
F. Grants to Companies for ''Outward Expansion'' and Export Performance in Guangdong Province
G. Preferential Loans and Directed Credit to the Magnesia Carbon Brick Industry
H. Cash Grant Programs
   1. Fund for Supporting Technological Innovation for Technological Small- and Medium–Sized Enterprises (SMEs)
   2. Development Fund for SMEs
   3. Fund for International Market Exploration by SMEs
I. Zhejiang Province Program to Rebate Antidumping Costs

For further information explaining why the Department is investigating these programs, see CVD Initiation Checklist.

We are not including in our investigation the following programs alleged to benefit producers/exporters of the subject merchandise in the PRC:

A. Provision of Water for Less Than Adequate Remuneration
B. Provision of Natural Gas for Less Than Adequate Remuneration
C. VAT and Tariff Exemptions for Purposes of Fixed Assets Under the Foreign Trade Development Fund Program
D. Shenzhen City Program to Rebate Antidumping Costs

For further information explaining why the Department is not initiating an investigation of these programs, *see* CVD Initiation Checklist.

Respondent Selection

For this investigation, the Department intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the POI (*i.e.*, calendar year 2008). We intend to release the CBP data under Administrative Protective Order (APO) to all parties with access to information protected by APO within five days of the announcement of the initiation of this investigation. Interested parties may submit comments regarding the CBP data and respondent selection within seven calendar days of publication of this notice. We intend to make our decision regarding respondent selection within 20 days of publication of this notice.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on the Department's website at http://ia.ita.doc.gov/apo.

Distribution of Copies of the CVD Petition

In accordance with section 702(b)(4)(A)(i) of the Act and 19 CFR 351.202(f), a copy of the public version of the CVD PRC Petition has been provided to the representatives of the GOC. Because of the particularly large number of producers/exporters identified in the CVD PRC Petition, the Department considers the service of the public version of the petition to the foreign producers/exporters satisfied by the delivery of the public version to the GOC, consistent with 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiation, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the petition was filed, whether there is a reasonable indication that imports of subsidized magnesia carbon bricks from the PRC materially injure, or threaten material injury to, a U.S. industry. *See*

section 703(a)(2) of the Act. A negative ITC determination will result in the investigation being terminated; *see* section 703(a)(1) of the Act. Otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: August 18, 2009.

Carole Showers,

Acting Deputy Assistant Secretary for Policy and Negotiations.

Appendix I

Scope of the Investigation

Imports covered by this petition consist of certain chemically bonded (resin or pitch), magnesia carbon bricks with a magnesia component of at least 70 percent magnesia (''MgO'') by weight, regardless of the source of raw materials for the MgO, with carbon levels ranging from trace amounts to 30 percent by weight, regardless of enhancements, (for example, magnesia carbon bricks can be enhanced with coating, grinding, tar impregnation or coking, high temperature heat treatments, anti–slip treatments or metal casing) and regardless of whether or not anti–oxidants are present (for example, antioxidants can be added to the mix from trace amounts to 15 percent by weight as various metals, metal alloys, and metal carbides). Certain magnesia carbon bricks that are the subject of this investigation are currently classifiable under subheadings 6902.10.10.00, 6902.10.50.00, 6815.91.00.00, and 6815.99 of the Harmonized Tariff Schedule of the United States (HTSUS). While HTSUS subheadings are provided for convenience and customs purposes, the written description is dispositive.

[FR Doc. E9–20493 Filed 8–24–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XR07

Endangered Species; File No. 14396

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that the Delaware Department of Natural Resources and Environmental Control-Division of Fish and Wildlife, Dover, Delaware, has applied in due form for a permit to take shortnose sturgeon (Acipenser brevirostrum) for purposes of scientific research.

DATES: Written, telefaxed, or e-mail comments must be received on or before September 24, 2009.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the Features box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov/index.cfm*, and then selecting File No. 14396 from the list of available applications. These documents are also available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Northeast Region, NMFS, Protected Resources Division, 55 Great Republic Drive, Gloucester, MA 01930; phone (978)281–9300; fax (978)281–9333.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *NMFS.Pr1Comments@noaa.*gov. Include in the subject line of the e-mail comment the following document identifier: File No. 14396.

FOR FURTHER INFORMATION CONTACT: Malcolm Mohead or Kate Swails, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The applicant is seeking a five-year scientific research permit to conduct a study of shortnose sturgeon in the Delaware River. The primary study objective would be to locate and document nursery areas, individual movement patterns, seasonal movements, home ranges, and habitats of juvenile shortnose sturgeon through the use of telemetry. This focus would be in association with an ongoing Atlantic sturgeon (*Acipenser oxyrinchus oxyrhinchus*) study with similar objectives. Up to 200 shortnose sturgeon would be weighed, measured, examined for tags, marked with Passive Integrated Transponder (PIT) tags and Floy tags, and released. Up to 15 early stage juvenile shortnose sturgeon would also be anesthetized and implanted with acoustic transmitters if they are of suitable size. A total of one unintentional mortality is requested over the five year term of the project which is scheduled to take place from March 1 to December 15.

Dated: August 19, 2009.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–20491 Filed 8–24–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XQ20

Incidental Takes of Marine Mammals During Specified Activities; Marine Geophysical Survey in the Northeast Pacific Ocean, August–October, 2009

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of incidental take authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) regulations, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to Lamont-Doherty Earth Observatory (L-DEO), a part of Columbia University, to take small numbers of marine mammals, by Level B harassment only, incidental to conducting a marine seismic survey in the northeast Pacific Ocean.

DATES: Effective August 19, 2009 through October 13, 2009.

ADDRESSES: A copy of the IHA and the application are available by writing to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225 or by telephoning the

contact listed here. A copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or by visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Jeannine Cody, Office of Protected Resources, NMFS, (301) 713–2289 ext 113.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(D) of the MMPA (16 U.S.C. 1371 (a)(5)(D)) directs the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional, taking of marine mammals, for periods of not more than one year, by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental taking of small numbers of marine mammals shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. The authorization must set forth the permissible methods of taking, other means of effecting the least practicable adverse impact on the species or stock and its habitat and monitoring and reporting of such takings. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [''Level A harassment'']; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [''Level B harassment''].

Section 101(a)(5)(D) of the MMPA establishes a 45–day time limit for NMFS' review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Not later than 45 days after the close of the public comment period, if the Secretary makes the findings set forth in Section 101(a)(5)(D)(i) of the MMPA, the Secretary shall issue or deny issuance of the authorization with appropriate conditions to meet the requirements of clause 101(a)(5)(D)(ii) of the MMPA.

Summary of Request

On February 11, 2009, NMFS received an application from L-DEO for the taking by Level B harassment only, of small numbers of 33 species of marine mammals incidental to conducting a marine seismic survey within the Exclusive Economic Zone (EEZ) of Canada in the northeast Pacific Ocean during August through October 2009. L-DEO, with research funding from the NSF, is conducting the geophysical data acquisition activities. NMFS outlined the purpose of the research program in a previous notice for the proposed IHA (74 FR 21631, May 8, 2009).

Description of the Specified Activity

The planned survey will involve one source vessel, the R/V *Marcus G. Langseth* (*Langseth*), a seismic research vessel owned by the NSF and operated by L-DEO. The proposed project is scheduled to commence on August 19, 2009, and scheduled to end on October 13, 2009. The vessel will depart Astoria, Oregon on August 19, 2009 for transit to the Endeavor MPA, between 47–48° N. and 128–130° W.

To obtain high-resolution three-dimensional (3D) structures of the Lau Basin's magmatic systems and thermal structures, the *Langseth* will deploy a towed array of 36 airguns with a total discharge volume of approximately 6,600 cubic inches (in^3). The array configuration consists of four identical linear arrays or strings, with 10 airguns on each string. L-DEO will distribute the four airgun strings across an approximate area of 24 x 16 meters (m) (79 x 52 feet (ft)) behind the *Langseth* which will tow the array approximately 50–100 m (164–328 ft) behind the vessel at a tow-depth of 9–15 m (29.5–49.2 ft). The airgun array will fire for a brief (0.1 second (s)) pulse every 180 s. The array will remain silent at all other times.

The seismic study (e.g., equipment testing, startup, line changes, repeat coverage of any areas, and equipment recovery) will take place in deep (between 1200 and 3000 m, 3,280 feet (ft) and 1.8 miles (mi)) water and will require approximately 10 days to complete 12 transects of variable lengths totaling 1800 km of survey lines. Data acquisition will include approximately 240 hours of airgun operation. Please see L-DEO's application for more detailed information. The exact dates of the activities will depend on logistics, weather conditions, and the need to repeat some lines if data quality is substandard.

L-DEO will conduct all geophysical data acquisition activities with on-board assistance by the scientists who have proposed the NSF-funded study. The scientific team consists of NSF, is conducting the geophysical data acquisition activities with onboard assistance by Drs. Toomey and Hooft from the University of Oregon, and Dr. Wilcock from the University of Washington. The vessel will be self-contained, and the crew will live aboard the vessel for the entire cruise.

NMFS has provided a more detailed description of the authorized action, including vessel and acoustic source specifications, in a previous notice for the proposed IHA (74 FR 21631, May 8, 2009).

Safety Radii

The distance from the sound source at which an animal would be exposed to these different received sound levels may be estimated and is typically referred to as safety radii. These safety radii are specifically used to help NMFS estimate the number of marine mammals likely to be harassed by the proposed activity and in deciding how close a marine mammal may approach an operating sound source before the applicant will be required to power-down or shut down the sound source.

L-DEO's acoustic models predict received sound levels in relation to distance and direction from the 36–airgun array in order to estimate the safety radii around their operations. L-DEO's model is based on empirical data gathered during the acoustic calibration study of the R/V *Maurice Ewing*'s (*Ewing*) array of 20 airguns (total volume 8600 in^3) conducted in the northern Gulf of Mexico in 2003. L-DEO provides a more detailed description of the modeling effort and calculations of the safety radii in the previous notice for the proposed IHA (74 FR 21631, May 8, 2009), Section I of L-DEO's IHA

application, and in Appendix A of the Environmental Assessment report prepared by LGL Limited environmental research associates (LGL) on behalf of NSF. NMFS has determined that the foregoing data and studies represent the best scientific evidence available a the present time.

Using the modeled distances and various correction factors, Table 1 outlines the predicted distances at which three root mean square (rms) sound levels (190 decibels (dB), 180 dB, and 160 dB) are expected to be received from the 36–airgun array and a single airgun operating in water greater than 1000 m (3,820 ft) in depth.

Source and Volume	Tow Depth (m)	Predicted RMS Distances (m)		
		190 dB	180 dB	160 dB
Single Bolt airgun 40 in^3	6–15*	12	40	385
4 strings 36 airguns 6600 in^3	6	220	710	4670
	9	300	950	6000
	12	340	1120	6850
	15	380	1220	7690

*The tow depth has minimal effect on the maximum near-field output and the shape of the frequency spectrum for the single 40 in^3 airgun; thus the predicted safety radii are essentially the same at each tow depth.

Comments and Responses

NMFS published a notice of receipt of the L-DEO application and proposed IHA in the **Federal Register** on May 8, 2009 (74 FR 21631). During the comment period, NMFS received comments from the Marine Mammal Commission (Commission), Cetacean Society International (CSI); and the Wild at Heart Legal Defense Association (WAHLDA). Following are the comments from the Commission, CSI, WAHLDA and NMFS' responses.

Comment 1: The Commission recommends that NMFS provide additional justification for its preliminary determination that the planned monitoring program will be sufficient to detect, with a high level of confidence, all marine mammals within or entering the identified safety zones; as such monitoring is essential for determining whether animals are being taken in unanticipated ways and unexpected numbers.

Response: NMFS believes that the planned monitoring program will be sufficient to detect (using visual detection and passive acoustic monitoring (PAM)), with reasonable certainty, most marine mammals within or entering identified safety radii. This monitoring, along with the required mitigation measures (see below), will result in the least practicable adverse impact on the affected species or stocks and will result in a negligible impact on the affected species or stocks. The *Langseth* is utilizing a team of trained marine mammal observers (MMOs) to visually monitor marine mammals and conduct passive acoustic monitoring (PAM).

The *Langseth*'s high observation tower is a suitable platform for conducting marine mammal observations. When stationed on the observation platform, the MMO's eye level will be approximately 18 m (59 ft) above sea level, providing a panoramic view around the entire vessel. During the daytime, the MMO(s) will scan the area around the vessel systematically using reticle binoculars (e.g., 7 x 50 Fujinon), big-eye binoculars (25 x 150), and the naked eye. The platform of the *Langseth* is high enough that, in good weather, MMOs can see out to 8.9 nm (16.5 km, 10.2 mi). All of the 180–dB safety radii that MMOs will monitor during ramp-ups and power-downs are less than 2 km (1.1 nm, 1.2 mi).

MMOs will use night vision devices (NVDs) (ITT F500 Series Generation 3 binocular-image intensifier or equivalent), during dusk or nighttime, when required. Finally, L-DEO will provide laser rangefinding binoculars (Leica LRF 1200 laser rangefinder or equivalent) to MMOs to assist with distance estimation. MMOs estimate that visual detection from the ship is between 150 and 250 m (492 and 820 ft) using NVDs and about 30 m (98.4 ft) with the naked eye, which are affected by ambient lighting conditions, sea state, and thermal factors.

The *Langseth* will complement visual observations of marine mammals with an acoustical monitoring program. L-DEO will use a PAM system to improve detection, identification, localization, and tracking of marine mammals. The acoustic monitoring will alert visual observers (if on duty) when vocalizing cetaceans are detected. When an MMO detects a vocalization while visual observations are in progress, the acoustic MMO will contact the visual MMO immediately, to alert him/her to the presence of cetaceans (if they have not already been seen), and to initiate a power down or shut down, if required.

The theoretical detection distance of this PAM system is tens of kilometers and it has reliable detection rates out to 3 km (1.6 nm) and more limited ability out to tens of kilometers. During the *Ewing*'s cruise in the Gulf of Mexico in 2003, MMOs detected marine mammals at a distance of approximately 10 km (5.4 nm) from the vessel and identified them to species level at approximately 5 km (2.7 nm) from the vessel, though the bridge of that vessel was only 11 m (36 ft) above the water (vs. the *Langseth*, which is 18 m (59 ft) above sea level).

The likelihood of MMOs visual detecting a marine mammal at night is significantly lower than the ability to detect any species during the day. However, the PAM operates equally as effective at night as during the day, and does not depend on good visibility.

The *Langseth* will not start up the airguns unless the MMO can visibly detect the safety range for the 30 minutes prior (i.e., not at night) to start up. In all cases at night, the *Langseth* will already be operating the airguns. NMFS believes that operating the airguns at night will cause many cetaceans to avoid the vessel; thus reducing the number of cetaceans likely to come within the safety radii. Additionally, all of the safety radii in deep water depths are smaller than 2 km (1.1 nm, 1.2 mi) and fall easily within the reliable detection capabilities of the PAM.

Comment 2: The Commission recommends that NMFS clarify the qualifier ''when feasible'' with respect to: (1) using two marine mammal visual observers to monitor the exclusion zone for marine mammals during daytime operations and nighttime start-ups of the airguns; and (2) using marine mammal visual observers during daytime periods to compare sighting rates and animal behavior during times when the seismic airguns are operating and times when they are not.

Response: NMFS considers whether a particular mitigation is capable of being effected, done, or executed (i.e., feasible). For this IHA, the qualifier ''feasible'' is only applicable when the seismic system is not operating. It does

not apply during seismic operations (Permit, P.5; Condition 8(a)(i).

NMFS' consideration of practicability includes (among other relevant considerations) economic and technological feasibility (see 50 CFR 216.104(a)(11)). NMFS believes that the IHA's mitigation and monitoring measures are complete to the fullest extent practicable, and ensure that the takings will be limited to harassment and will result in a negligible impact on the affected species or stocks of marine mammals.

The *Langseth* is utilizing a team of trained marine mammal observers (MMO) to both visually monitor from the high observation tower of the *Langseth* and to conduct PAM. L-DEO will utilize two (except during meal times), NMFS-qualified, vessel-based marine mammal visual observers (MMVO) to watch for and monitor marine mammals near the seismic source vessel during all daytime airgun operations and before and during start-ups of airguns day or night.

MMVOs will have access to reticle binoculars (7x50 Fujinon), big-eye binoculars (25x150), and night vision devices to scan the area around the vessel. MMVOs will alternate between binoculars and the naked eye to avoid eye fatigue. During all daytime periods, two MMVOs will be on effort from the observation town to monitor greater than 90 percent of the time. During mealtimes it is sometimes difficult to have two MMOs on effort, but at least one MMVO will be on watch during those brief scheduled times. Three MMOs are typically on watch at a time, and typically observe for one to three hours. Two MMVOs will also be on watch during all nighttime start-ups of the seismic airguns. A third MMO will be monitoring the PAM equipment 24 hours a day to detect vocalizing marine mammals present in the action area.

Comment 3: The Commission recommends that the monitoring period prior to the initiation of seismic activities and prior to the resumption of airgun activities after a power-down be extended to one hour.

Response: NMFS believes that 30 minutes is an adequate length of time for monitoring prior to the start-up of airguns. The IHA requires that the MMOs monitor the area for at least 30 minutes prior to starting the airgun array (day or night) to ensure that no marine mammals are seen within the safety zone before a seismic survey commences. The *Langseth*'s ramp up protocol begins with the smallest gun in the array and adds additional airguns in a sequence such that the source level of the array will increase in steps not exceeding approximately 6 dB per 5–min period over a total duration of 20–30 minutes. Thus, the total time of monitoring prior to start-up of any but the smallest array is effectively longer than 30 minutes. In many cases MMOs are making observations during times when sonar is not being operated and will actually be observing the area prior to the 30–minute observation period.

Comment 4: The Commission recommends that NMFS require that observations be made during all ramp-up procedures to gather the data needed to analyze and provide a report on the effectiveness of this method as a mitigation measure.

Response: The IHA requires L-DEO to submit a draft and final report on all activities and monitoring results to the NMFS, Office of Protected Resources, within 90 days after the expiration of the IHA. NMFS will post the report at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*.

This report: (1) must include an estimate of the number (by species) of marine mammals that are known to have been exposed to the seismic activity (visual observation) at received levels greater than or equal to 160 dB re 1 µPa (rms) and/or 180 dB re 1 µPa (rms) with a discussion of any specific behaviors those individuals exhibited; and (2) must also include an estimate of the number of marine mammals that may have been exposed to the seismic activity at received levels greater than or equal to 160 dB re 1 µPa (rms) and/or 180 dB re 1 µPa (rms) with a discussion of the nature of the probable consequences of that exposure on the individuals that have been exposed.

NMFS has asked NSF and L-DEO to gather all data that could potentially provide information regarding effectiveness of ramp-ups as a mitigation measure. However, considering the low numbers of marine mammal sightings and low numbers of ramp-ups, it is unlikely that the information will result in any statistically robust conclusions for this particular seismic survey. Over the long term, these requirements may provide information regarding the effectiveness of ramp-up as a mitigation measure, provided animals are detected during ramp-up. *Comment 5:* It is expected that Canada will have consulted and commented on this proposal, and CSI respectfully requests a link to those documents for review.

Response: NMFS received no comments from the Canadian government or from any Canadian organization during the public comment period. However, the terms and conditions of the IHA encourage NSF to coordinate with the Canadian government regarding the proposed seismic activity.

Comment 6: While not relevant to the MMPA, it should be noted that 12 species found nowhere else in the world have been identified at the Endeavour Hydrothermal Vents. Given that the potential for deleterious acoustic impacts on invertebrates from the L-DEO survey is almost totally unknown, CSI specifically requests that NMFS require L-DEO and the NSF to support a survey of the site sufficient to document whether or not these extremely limited species were impacted by the experiment.

Response: NMFS' support of a post-seismic survey of invertebrates is not germane to this Federal action under the MMPA. NMFS acknowledges that at least 12 species are endemic to the Endeavour site. However, the area is dynamic, and the natural variability within the hydrothermal vents is high. Although OBS placement will disrupt a very small area of seafloor habitat and may disturb benthic invertebrates, the impacts are expected to be localized and transitory. NMFS does not expect that the placement of OBS would have adverse effects beyond naturally occurring changes in this environment, and any effects of the planned activity on ocean and coastal habitats are expected to be negligible.

NSF's EA (and associated report) analyzed the potential for the seismic survey activity to affect ecosystem features and biodiversity components, including fish, invertebrates, seabirds, and sea turtles. NMFS' evaluation indicates that any direct or indirect effects of the action would not result in a substantial impact on biodiversity or ecosystem function. In particular, the potential for effects to these resources are considered here with regard to the potential effects on diversity or functions that may serve as essential components of marine mammal habitats. Most effects are considered to be short-term and unlikely to affect normal ecosystem function or predatory/prey relationships; therefore, NMFS believes that there will not be a substantial impact on marine life biodiversity associated with the Endeavor hydrothermal vent, the Endeavor MPA, or on the normal function of the nearshore or offshore environment.

Comment 7: The time between NMFS' first awareness of an L-DEO application and the start of the scheduled survey does not allow for significant changes to the operation without extraordinary economic hardship on the applicant, and that creates pressure on NMFS to

authorize operations based on cost. CSI and others question whether this economic and practical pressure might influence NMFS' final decision relating to an IHA; might a project be authorized to continue, despite a problem, because of the cost of fixing it?

Response: Section 101(a)(5)(D) of the MMPA establishes a 45–day time limit for NMFS' review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Not later than 45 days after the close of the public comment period, if the Secretary makes the findings set forth in Section 101(a)(5)(D)(i) of the MMPA, the Secretary shall issue or deny issuance of the authorization with appropriate conditions to meet the requirements of clause 101(a)(5)(D)(ii) of the MMPA.

The NMFS, OPR, Permits, Conservation, and Education Division has diligently processed L-DEO's application within the statutory timeframe (120 days) for an IHA under the MMPA. The Division deemed the application complete on May 1, 2009; published a notice of receipt and request for comments in the **Federal Register** on May 8, 2009 (74 FR 21631); and issued the IHA on August 19, 2009. NMFS received no public comments requesting L-DEO to significantly alter the survey's schedule or institute major operational changes.

L-DEO's proposed survey did not require substantial changes to the cruise plan or survey tracklines. As stated in this document, NMFS shall grant an IHA to L-DEO if NMFS finds that incidental taking of marine mammals will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth.

NMFS evaluates each IHA application independent of the cost of the proposed action, as this is not relevant to NMFS' determination of negligible impact or unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses.

For previously authorized IHAs, NMFS has required applicants to reschedule cruises; to modify survey tracklines; incorporate new temporal and spatial avoidance requirements; and to institute more precautionary measures to mitigate against the potential effects of the action on marine mammals.

Comment 8: L-DEO should contract openly with regional authorities and experts during the initial planning and scheduling phase, thereby building the project around the ''best science'' available. This amplifies the importance of the public comment period beyond a mere statutory requirement.

Response: NMFS acknowledges CSI's request and has forwarded your comment to NSF and L-DEO. If a CSI representative requests to comment on the initial planning and scheduling phases, they should discuss this directly with a representative from NSF and L-DEO.

Comment 9: The Office of Protected Resources (OPR) has not processed the application fast enough so that necessary changes brought to light through the public comment period might be applied with less onerous scheduling and operational changes.

Response: The NMFS, OPR, Permits, Conservation, and Education Division has diligently processed L-DEO's application within the statutory timeframe (120 days) for an IHA under the MMPA. The Division deemed the application complete on May 1, 2009; published a notice of receipt and request for comments in the **Federal Register** on May 8, 2009 (74 FR 21631); and issued the IHA on August 19, 2009. NMFS received no public comments requesting L-DEO to significantly alter the survey's schedule or institute major operational changes.

Comment 10: CSI recognizes that OPR may be required to supplement an Application with an Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) section 7 consultation, Biological Opinion and Environmental Assessment, all of which take time. This ETOMO Application was received February 11, 2009, the **Federal Register** Notice was published May 8, 2009, and we doubt there is time between the June 8, 2009, close of public comments and the start date of August 19, 2009 for L-DEO to adjust to potentially required changes in an IHA brought to light within the comment period. From recent experience the IHA can be expected to be issued close to the start date, making changes even more onerous. In other words, will an IHA be authorized in spite of issues, because of the cost to make it right? CSI is not accusing either OPR or L-DEO, but we are asking that even the appearance of the potential be removed.

Response: See NMFS' response to Comment 9. NMFS disagrees with the commenter's views on the timeliness of processing of the application. The OPR received the application on February 11, 2009. However, the Permits, Conservation, and Education Division (PR1) deemed the application incomplete under the MMPA and requested additional information from L-DEO (See 50 CFR 216.104(b)(1) which states that NMFS must determine the adequacy and completeness of an application prior to initiating the public review process). PR1 deemed the application complete on May 1, 2009. Pursuant to the MMPA, NMFS published a notice of receipt and request for comments in the **Federal Register** on May 8, 2009 (74 FR 21631), within one week of determining that the application was complete. Not later than 45 days after the close of the public comment period, if the Secretary makes the findings set forth in Section 101(a)(5)(D)(i) of the MMPA, the Secretary shall issue or deny issuance of the authorization with appropriate conditions to meet the requirements of clause 101(a)(5)(D)(ii). NMFS issued the IHA on (August19, 2009) within the required MMPA statutory timeframe of 120 days.

Regarding the ESA section 7 consultation, the Office of Protected Resources, Endangered Species Division (PR3) determined that the information provided by the NSF and L-DEO was sufficient to initiate formal consultation under the ESA on April 16, 2009. On August 18, 2009, NMFS issued a Biological Opinion (BiOp) and concluded that the issuance of the IHA was not likely to jeopardize the continued existence of the humpback (*Megaptera novaeangliae*), sei (*Balaenoptera borealis*), fin (*Balaenoptera physalus*), blue (*Balaenoptera musculus*), and sperm (*Physeter macrocephalus*) whales. NMFS issued the BiOp within the ESA statutory timeframe of 135 days. NMFS included the BiOp's Terms and Conditions of the Incidental Take Statement as mitigation measures in the IHA.

Comment 11: The solution CSI respectfully asks both OPR and NMFS for is a longer base time between application and start date. It is clear that L-DEO will be at this for a long time, and schedules must be set for 2010 and beyond.

Response: See NMFS' responses to Comments 9 and 10.

Comment 12: L-DEO's current process depends almost entirely upon the validity of the assumptions and assessments from L-DEO's in-house and contracted analysis, which have been proven to be inadequate. Perhaps recognizing this, L-DEO requested consultations with the South Pacific Whale Research Consortium (SPWRC) before the Tonga survey, but demanded

confidentiality, which SPWRC refused. L-DEO Tonga went on anyway, without that expert assistance.

Response: NMFS cannot speak to L-DEO's consultations with the SPWRC and recommends that CSI should discuss their concerns with a representative from L-DEO.

Comment 13: The L-DEO process failed with the L-DEO TAIGER survey in Southeast Asia, as public comments were received from concerned regional authorities and experts about several issues. One issue required an amended IHA, and the project was delayed accordingly, but the literally last minute public process should not have been the impetus. L-DEO would have precluded the issues by contracting with the well-known experts that were forced to express their concerns only during the public comment period. Taiwan's renewed, potentially threatening interest in the project only came about because the regional experts were seeking ways to have their concerns noted. Why not just hire the local experts and start earlier?

Response: The Canadian ETOMO survey is a separate action from the TAIGER survey. NMFS acknowledges CSI's concerns and refers the commenter to 74 FR 41260, August 14, 2009, for information on the IHA for the L-DEO TAIGER survey.

Comment 14: The ETOMO Application should not be ''easy'' because there are no systematically collected data on cetacean distribution and abundance in the proposed survey region.

Response: NMFS recognizes that absence of evidence is not the same as having no effect or impact on the affected marine mammal species or stocks. However, NMFS is not relying solely on absence of evidence. All parties involved have used the best information currently available to analyze the impacts to marine mammals as shown in: (1) the **Federal Register** notice for the receipt of L-DEO's application (74 FR 21631, May 8, 2009); (2) the EA; (3) the BiOp and ITS; and (4) numerous and salient public comments received by NMFS during the public comment period. Based on the evidence cited, NMFS concludes that the proposed seismic surveys would have a negligible impact on the affected species or stocks of marine mammals and are not likely to jeopardize the continued existence of any ESA-listed species.

Comment 15: The absence of specific data elevates the value of Kristin Kaschner's Ph.D. thesis, ''*Modelling and mapping resource overlap between marine mammals and fisheries on a global scale*,'' (2004) which maps suitable habitat for marine mammals around the world, ranking the Relative Environmental Suitability (RES) for each species. Kaschner shows that the Endeavour MPA offers highly suitable habitat for several species for which the daylight visual observation mitigation measures are inadequate. She predicts that the habitat is likely to support sei and sperm whales, which were caught in the region historically. She predicts that the habitat is likely to support poorly studied beaked whales (especially Cuvier's [Ziphius cavirostris]), which are thought to be susceptible to seismic survey impacts. And she predicts that the study area offers good quality habitat for species known to be recovering from 20th century commercial whaling, namely fin, humpback and sperm whales. But this data is not ''real.''

Response: NMFS thanks the commenter for this information and considers all relevant public comments before making a determination on the issuance of the IHA. A detailed discussion of the potential effects of this action on marine mammal habitat, was included in the notice of the proposed IHA (74 FR 21631, May 8, 2009). Based on the discussion in the proposed IHA notice, the authorized operations are not expected to have any habitat-related effects that could cause significant or long-term consequences for individual marine mammals or their populations or stocks and will not result in any permanent impact on habitats used by marine mammals, or to the food sources they use. The main impact issue associated with the proposed activity will be temporarily elevated noise levels and the associated direct effects on marine mammals.

Please note that NMFS' Biological Opinion concludes that the issuance of the IHA was not likely to jeopardize the continued existence of the humpback), sei, fin, blue, and sperm (Physeter macrocephalus) whales.

Comment 16: While science continues to search for ways to get the necessary data, L-DEO and NSF will continue to believe that their seismic surveys have no significant effect. It is expected that NMFS will find ''that the taking will have a negligible impact on the species or stock(s)'' despite the lack of real information. The absence of proof of harm is not the same as proving that there is no harm.

Response: See NMFS' response to Comment 14.

Comment 17: First, it has not been adequately explained in the Draft Environmental Assessment why the ''No Action'' alternative might be rejected in favor of the project, which, according to the proponent's own assessment, has the potential to harass several thousand cetaceans, including eight species described in the notice as being listed as endangered under the U.S. Endangered Species Act. That the acquisition of data concerning one natural phenomenon (e.g. ''the sub-seafloor structure of volcanic and hydrothermal features that form as a result of movements of the Earth's plates'' (DEA, p2)) should increase the threat to the existence of another natural phenomenon (e.g. a species of whale) of equally great (if less generously funded) academic interest is an illogical and tragic course of action. It should be noted that it has not been proven that knowledge of the sub-seafloor structure is of greater long-term importance for the continuation of human life on Earth than the biodiversity upon which we are very much dependent.

Response: The commenter's statements on assessing the value of acquiring information on one natural phenomena (geophysical) versus another natural phenomena (biodiversity) are not germane to NMFS' federal action the issuance of an MMPA authorization to L-DEO. Under section 101(a)(5)(D) of the MMPA, NMFS is required to determine whether the taking by the applicant's specified activity will have a negligible impact on the affected marine mammal species or population stocks. Alternatives assessments are NMFS' responsibility under NEPA, not the MMPA. In that regard, the NSF's EA and associated EA report contain adequate information on the alternatives No Action, Another Time, and Preferred Action. The associated EA report provides a step-by-step analysis on how the NSF assessed the alternatives, starting with (and citing) the best scientific information available on marine mammal distribution and abundance and using those data to make conservative estimates on levels of take by harassment and reasonable assumptions on why no marine mammals are likely to be harassed by this survey.

Comment 18: The assessment carried out by LGL for this L-DEO project must be treated with caution given the very recent experience of the L-DEO seismic survey currently underway in the waters of southeast Asia, for which LGL prepared an EA that understated the numbers of cetaceans of certain species that might be exposed to airgun noise and the level of potential harassment, misquoted the status of at least one critically endangered population of cetaceans (the Eastern Taiwan Strait (ETS) Indo-Pacific humpback dolphins) and resulted in transect lines running

directly through the narrow habitat of the ETS humpback dolphins and the scheduling of surveys near the Philippines that coincided ''spatially and temporally with the northward migration of mothers with neonatal and other young calves'' (Anon, 2009), to cite a few of the concerns raised by scientists and NGOs during the comment period for that project (e.g. *http://www.nmfs.noaa.gov/pr/pdfs/permits/taiger_comments.pdf*).

Response: NMFS acknowledges WAHLDA's concerns and refers the commenter to 74 FR 41260, August 14, 2009, for information on the L-DEO TAIGER survey.

NMFS closely follows NEPA regulations and NOAA Administrative Order 216–6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999) before making a determination on whether it will adopt another Federal agency's NEPA document, or prepare its own. Critical to this determination is the quality of another agency's NEPA document, whether it fully addresses the action proposed by NMFS the issuance of an MMPA authorization to L-DEO, and whether NMFS' proposed action is significant as defined in 40 CFR 1508.27 and NAO 216–6, section 6.01. As noted in the proposed authorization notice (74 FR 21631, May 8, 2009), the DEA contained a complete description of the proposed action and identified alternatives to that action; a description of the affected environment; an assessment of impacts, including unavoidable impacts, indirect impacts and cumulative impacts; and the measures proposed to reduce impacts to the lowest level practicable. In accordance with NAO 216–6, NMFS has reviewed the information contained in NSF's EA, and associated EA report, and determined that, while it accurately and completely describes the alternatives and the potential impacts, endangered species and other marine life could be impacted by the survey activities. As a result, NMFS has identified additional mitigation measures (e.g., mandatory shut-downs for north Pacific right whales) which are reflected in the final IHA and the NMFS' Finding of No Significant Impact (FONSI).

Comment 19: An additional, independent scientific review body is urgently needed in order to improve the quality of environmental assessment and recommended actions for this and all other seismic surveys.

Response: NMFS acknowledges WAHLDA's request and has forwarded your comment to NSF and L-DEO.

Comment 20: The safety radii for this project are used to decide how close a marine mammal may approach an operating sound source before a power-down or shut down is required. With detection of marine mammals being dependent upon the success of visual and acoustic monitoring, it is clearly essential that both forms of monitoring are carried out in such a way as to maximize the potential of detection. However, the description of the monitoring plans described in the FR notice suggest once again that worryingly minimal efforts to detect cetaceans will be made.

Response: See NMFS' response to Comment 1. The *Langseth* is utilizing a team of trained (MMVOs) to both visually monitor from the high observation tower of the *Langseth* and to conduct passive acoustic monitoring. When stationed on the observation platform of the *Langseth*, the MMVO's eye level will be approximately 17.8 m (58.4 ft) above sea level, so the visible distance (in good weather) to the horizon is 8.9 nm (16.5 km) (the largest safety radii is 7.7 km (4.2 nm)). Big eyes are most effective at scanning the horizon (for blows), while 7 x 50 reticle binoculars are more effective closer in (MMVOs also scan the area with the naked eye). Additionally, MMVOs will have a good view in all directions around the entire vessel.

Under section 101(a)(5)(D) of the MMPA, NMFS is required to determine whether the taking by the applicant's specified activity will have a negligible impact on the affected marine mammal species or population stocks. The monitoring and mitigation measures set forth in the IHA ensure that there will be negligible impacts on the marine mammals. Cetaceans are expected, at most, to show an avoidance response to the seismic pulses. Mitigation measures such as visual marine mammal monitoring, and shut-downs when marine mammals are detected within the defined ranges should further reduce short-term reactions to disturbance, and minimize any effects on hearing sensitivity.

Comment 21: With a minimum of only one marine mammal visual observer (MMVO) being required to be on duty during all daytime airgun operations, and only two observers being required to be on duty for only thirty minutes before and during ramp-ups (''and when possible at other times'' (DEA, p.3)) is clearly not a commitment) the chances of detecting cetaceans in the area (including the exclusion zone) within which they may be harassed (including level A and level B harassment) will be limited. Neither one nor two pairs of eyes will be capable of effectively scanning all areas around the *Langseth* simultaneously for cetaceans and turtles that is, if the aim of this measure truly is to attempt to minimize impacts on cetaceans and turtles. There should at least be a sufficient number of qualified, experienced visual observers to simultaneously cover all areas of water within the safety radii on duty during all periods of use of noise-generating seismic survey equipment (including before and during ramp-ups and at all other times of use).

Response: The IHA requires L-DEO to utilize two (except during meal times), NMFS-qualified, vessel-based marine mammal visual observers (MMVO) to watch for and monitor marine mammals near the seismic source vessel during all daytime airgun operations and before and during start-ups of airguns day or night. See NMFS' response to Comments 1 and 2 for a discussion of visual and acoustic monitoring of the safety radii.

Comment 22: The idea that passive acoustic monitoring (PAM) should be used during the day and night ''when practicable'' (DEA, p. 3) again suggests a reluctance to commit to applying these measures to their greatest capability, and a level of leniency that leaves room for almost unlimited exceptions. If L-DEO is serious about carrying out this seismic survey at the risk of harassing more than thirty marine mammal species and intends to attempt to mitigate potential impacts to the (already extremely limited) extent that it can, it should at least be committed to use PAM at all times during the survey, with no exceptions. (The operators' need for rest, food or other activities can be dealt with by increasing the number of (qualified and experienced) staff on duty and should not be used as a justification for lower effort to detect cetaceans using PAM).

Response: The IHA requires that L-DEO operates the PAM system both during the day and at night. The requirement of PAM for marine mammal detection is intended to provide additional monitoring to the standard visual monitoring by qualified MMVOs. PAM is not to be solely used for marine mammal monitoring and detection for the survey and will not replace visual monitoring. NMFS believes that L-DEO will be able to effectively monitor out to the 180 dB isopleth.

Comment 23: More worrying still is the fact that there appears, once again, to be no restriction against using the seismic survey equipment in the dark or ''at night''. The continuation of seismic survey activity outside of daylight hours severely reduces the already limited possibility of detecting cetaceans in the

vicinity, and effectively reduces monitoring efforts to the use of PAM, which will obviously not detect cetaceans when they are not vocalizing and will at certain times only be used ''when practicable''. It is strongly recommended that no seismic survey activity be carried out outside of daylight hours during which the entire safety radii are visible.

Response: The IHA requires that L-DEO operates the PAM system both during the day and at night. Regarding cessation of seismic activity at night, L-DEO has considered this recommendation, and has decided that it is not feasible, as limiting the surveys to daytime only would either result in the loss of half of the data or would necessitate doubling the duration of the project. Doubling the duration of the surveys is not possible because the *Langseth* has other research commitments after the Endeavor cruise. For seismic operators in general, a daylight-only requirement would be expected to result in one or more of the following outcomes: cancellation of potentially valuable seismic surveys, reduction in the total number of seismic cruises annually due to longer cruise durations, a need for additional vessels to conduct the seismic operations, or work conducted by non-U.S. operators or non-U.S. vessels when in waters not subject to U.S. law.

The IHA prohibits the start of the seismic source if the MMVOs cannot view the entire safety radius for any reason (darkness, fog, or rough seas). Thus, limiting seismic shooting to only daylight hours is unnecessary and unlikely to result in less Level B harassment to marine mammals than would conducting 24–hour survey operations. MMVOs using night vision devices (NVD) will be on watch during periods prior to and during a ramp-up at night. At other times during the night MMOs will be available, but it is not necessary or very effective for them to be on watch constantly. The use of PAM will improve the detection of marine mammals by indicating to the MMVOs when an animal is potentially near and prompting a power-down or shut-down when necessary. Marine mammals are unlikely to be injured, seriously injured or killed by the noise from approaching seismic arrays nor is it authorized.

Because of the need to keep a vessel at-speed in order to successfully tow the hydrophone streamers, the vessel would need to be underway throughout the night whether or not the airguns are fired at night. Additional down-time could be anticipated each day as the vessel maneuvers all night to come back to the shut-down location 30 minutes after daylight. This is unlikely to be successful very often and will likely result in additional time needed for surveys to be completed.

Taking into consideration the additional costs of prohibiting nighttime operations and the likely low impact of the activity (given the required monitoring and mitigation measures), NMFS has determined that the IHA's requirements will ensure that the activity will have the least practicable impact on the affected species or stocks for the following reasons. Marine mammals will have sufficient notice of a vessel approaching with operating seismic airguns, thereby giving them an opportunity to avoid the approaching array.

Comment 24: The suggestion in the DEA that ''additional research studies planned on the vessel for 2009 and beyond'' should be a major deciding factor in whether the survey can be rescheduled (which was also used as an argument to support night-time surveys for the SE Asia seismic survey) is not considered a scientifically sound or otherwise reasonable justification for reducing already limited impact mitigation measures. Scheduling should be based on the necessary impact mitigation measures, not vice versa.

Response: Under section 101(a)(5)(D) of the MMPA, NMFS is required to determine whether the taking by the applicant's specified activity will have a negligible impact on the affected marine mammal species or population stocks. NMFS believes that L-DEO's revised survey as well as the implementation of the required monitoring and mitigation measures described in the IHA will have a negligible impact on the affected species or stocks of marine mammals in the study area.

As discussed in the EA report, the scheduling of the *Langseth* makes the best use of the vessel to support NSF's science mission. In the EA, NSF concluded that L-DEO rescheduling the survey to an alternative time would offer minimal advantages or disadvantages at the Endeavor location. Thus, for the reasons stated throughout the text of this notice, NMFS believes that the agency is in compliance with both the MMPA and NEPA.

Description of Marine Mammals in the Activity Area

Thirty-three marine mammal species may occur off the coast of British Columbia, Canada, including 20 odontocetes (toothed cetaceans), 7 mysticetes (baleen whales), 5 pinnipeds, and the sea otter (Enhydra sp.). In the United States, sea otters are managed by the U.S. Fish and Wildlife Service (USFWS) and are unlikely to be encountered in or near the Endeavor Marine Protected Area where seismic operations will occur, and are, therefore, not addressed further in this document. Eight of these species are listed as endangered under the U.S. Endangered Species Act of 1973 (ESA), including the Steller sea lion (*Eumetopias jubatus*), the humpback sei, fin, blue, North Pacific right (Eubalena japonica), sperm, and Southern Resident killer (*Orcinus orca*) whales.

This IHA will only address requested take authorizations for cetaceans and pinnipeds. Table 2 below outlines the species, their habitat and abundance in the proposed survey area, and the estimated exposure levels. Additional information regarding the status and distribution of the marine mammals in the area as well as how L-DEO calculated the densities were included in a previous notice for the proposed IHA (74 FR 21631, May 8, 2009) and in Sections III and IV of L-DEO's application.

Species	Habitat	Abundance in the NE Pacific	Occurrence in the Survey Area	Estimated Number of Individuals Exposed to Sound Levels ≥160 dB	Approx. Percent of Regional Population
North Pacific right whale*	Coastal and shelf waters	100–200	Rare and unlikely	0	0
Humpback whale*	Coastal waters	>6000	Uncommon	6	0.10
Minke whale	Coastal and shelf waters	9000	Uncommon	5	0.06
Sei whale*	Pelagic	7260 - 12,620	Uncommon	1	0.01

Species	Habitat	Abundance in the NE Pacific	Occurrence in the Survey Area	Estimated Number of Individuals Exposed to Sound Levels ≥160 dB	Approx. Percent of Regional Population
Fin whale*	Pelagic, shelf and coastal waters	13,620–18,680	Uncommon	8	0.05
Blue whale*	Pelagic, shelf and inshore waters	1186	Uncommon	2	0.14
Sperm whale*	Pelagic	24,000	Uncommon	10	0.04
Pygmy sperm whale	Deep waters off the shelf	Not available	Common	9	Not available
Dwarf Sperm whale	Deep waters off the shelf	Not available	Uncommon	0	0.0
Baird's beaked whale	Deep waters and cont. slopes	6000	Common	13	0.21
Blainville's beaked whale	Deep waters and cont. slopes	603	Uncommon	2	0.28
Cuvier's beaked whale	Pelagic	20,000	Uncommon	0	0.0
Hubb's beaked whale	Deep waters and cont. slopes	421	Uncommon	2	0.40
Stejneger's beaked whale	Deep waters	421	Uncommon	2	0.40
Bottlenose dolphin	Coastal and offshore waters	3257	Rare	0	0.0
Striped dolphin	Pelagic	23,883	Rare	0	0.0
Short-beaked common dolphin	Coastal and offshore waters	487,622	Common	104	0.02
Pacific white-sided dolphin	Pelagic, shelf and slope waters	931,000	Common	181	0.02
Northern right-whale dolphin	Pelagic, shelf and slope waters	15,305	Common	142	0.93
Risso's dolphin	Pelagic	12,093	Common	95	0.78
False killer whale	Pelagic	Not available	Rare	0	NA
Killer whale	Widely distributed	8500	Uncommon	12	0.15
Short-finned pilot whale	Pelagic	160,200	Uncommon	0	00.0
Dall's porpoise	Offshore and nearshore waters	57,549	Common	1081	1.88
Northern fur seal	Coastal	721,935	Common	73	0.01
Total				1,748	

Table 2. Abundance, preferred habitat, and commonness of the marine mammal species that may be encountered during the proposed survey within the ETOMO survey area. The far right columns indicate the estimated number and percentage of the population of each species that may be exposed to sound levels ≥160 dB based on average density estimates. NMFS believes that, when mitigation measures are taken into consideration, the activity is likely to result in take of numbers of animals less than those indicated by the column titled Estimated Number of Individuals Exposed to Sound Levels ≥160 dB.

* Federally listed endangered species.

Potential Effects of the Proposed Activity on Marine Mammals

The effects of sounds from airguns might include one or more of the following: tolerance, masking of natural sounds, behavioral disturbance, temporary or permanent hearing impairment, or non-auditory physical or physiological effects (Richardson *et al.*, 1995; Gordon *et al.*, 2004; Nowacek *et al.*, 2007; Southall *et al.*, 2007). Permanent hearing impairment, in the unlikely event that it occurred, would constitute injury, but temporary threshold shift (TTS) is not an injury (Southall *et al.*, 2007). Although the possibility cannot be entirely excluded, it is unlikely that the project would result in any cases of temporary or permanent hearing impairment, or any significant non-auditory physical or physiological effects. Some behavioral disturbance is expected, but is expected to be localized and short-term.

The notice of the proposed IHA (74 FR 21631, May 8, 2009) included a discussion of the effects of sounds from airguns on mysticetes (baleen whales), odontocetes (toothed whales), and pinnipeds including tolerance, masking, behavioral disturbance, hearing impairment, and other non-auditory physical effects. Additional information on the behavioral reactions (or lack thereof) by all types of marine mammals to seismic vessels is discussed in Appendix B of L-DEO's application.

The notice of the proposed IHA also included a discussion of the potential effects of the multibeam echosounder (MBES) and the sub-bottom profiler (SBP). Because of the shape of the beams of these sources and their power, NMFS believes it unlikely that marine mammals will be exposed to either the MBES or the SBP at levels at or above those likely to cause harassment. Further, NMFS believes that the brief exposure of cetaceans or pinnipeds to few signals from the multi-beam bathymetric sonar system is not likely to result in the harassment of marine mammals.

Estimated Take by Incidental Harassment

The notice of the proposed IHA (74 FR 21631, May 8, 2009) included an in-depth discussion of the methods used to calculate the densities of the marine mammals in the area of the seismic survey and the take estimates. Based on numbers of animals encountered during previous L-DEO seismic surveys, the likelihood of the successful implementation of the required mitigation measures, and the likelihood that some animals will avoid the area around the operating airguns, NMFS believes that L-DEO's airgun seismic testing program may result in the Level B harassment of some lower number of individual marine mammals (a few times each) than is indicated by the column titled, Estimated Number of Individuals Exposed to Sound Levels ≥160 dB, in Table 2. L-DEO has asked for authorization for take of their ''best estimate'' of numbers for each species. Though NMFS believes that take of the requested numbers is unlikely, we still find these numbers small relative to the population sizes.

Estimates of the numbers of marine mammals that might be affected are based on consideration of the number of marine mammals that could be disturbed appreciably by approximately 1800 km of seismic surveys during the proposed seismic program in the ETOMO study area. The estimates of exposures to various sound levels assume that the surveys will be completed; in fact, the planned number of line-kilometers has been increased by 25 percent to accommodate lines that may need to be repeated, equipment testing, etc.

All anticipated ''takes by harassment'' authorized by this IHA are Level B harassment only, involving temporary changes in behavior. Because of the required implementation of mitigation measures and the likelihood that some cetaceans will avoid the area around the operating airguns of their own accord, NMFS does not expect any marine mammal to approach the sound source close enough to be injured (Level A harassment). Given these considerations, the predicted number of marine mammals that might be exposed to sounds at or greater than 160 dB may be somewhat overestimated. Thus, the following estimates of the numbers of marine mammals potentially exposed to sounds equal to or greater than 160 dB are precautionary, and probably overestimate the actual numbers of marine mammals that might be exposed.

Potential Effects on Habitat

A detailed discussion of the potential effects of this action on marine mammal habitat, was included in the notice of the proposed IHA (74 FR 21631, May 8, 2009). Based on the discussion in the proposed IHA notice, the authorized operations are not expected to have any habitat-related effects that could cause significant or long-term consequences for individual marine mammals or their populations or stocks and will not result in any permanent impact on habitats used by marine mammals, or to the food sources they use. The main impact issue associated with the proposed activity will be temporarily elevated noise levels and the associated direct effects on marine mammals.

The *Langseth* will deploy and retrieve approximately 64 OBS. The OBS anchors will remain upon equipment recovery. Although OBS placement will disrupt a very small area of seafloor habitat and may disturb benthic invertebrates, the impacts are expected to be localized and transitory. The vessel will deploy the OBS in such a way that creates the least disturbance to the area. Thus, it is not expected that the placement of OBS would have adverse effects beyond naturally occurring changes in this environment, and any effects of the planned activity on marine mammal habitats and food resources are expected to be negligible.

Monitoring and Mitigation Measures

Mitigation and monitoring measures required to be implemented for the proposed seismic survey have been developed and refined during previous L-DEO seismic survey studies and associated environmental assessments, IHA applications, and IHAs. The mitigation and monitoring measures described herein represent a combination of the procedures required by past IHAs for other similar projects and on recommended best practices in Richardson *et al.* (1995), Pierson *et al.* (1998), and Weir and Dolman (2007). The measures are described in detail below this section.

Required mitigation measures include: (1) safety radii; (2) speed or course alteration, provided that doing so will not compromise operational safety requirements; (2) power-down procedures; (3) shutdown procedures; (4) ramp-up procedures; and (5) special procedures for nighttime and low-light hour operations.

Vessel-based Visual Monitoring

Vessel-based marine mammal visual observers (MMVOs) will be based aboard the seismic source vessel and will watch for marine mammals near the vessel during daytime airgun operations and during start-ups of airguns at night. MMVOs will also watch for marine mammals near the seismic vessel for at least 30 minutes prior to the start of airgun operations and after an extended shutdown of the airguns (i.e., 9 minutes). When feasible, MMVOs will also make observations during daytime periods when the seismic system is not operating for comparison of animal abundance and behavior. Based on MMVO observations, airguns will be powered down, or if necessary, shut down completely (see below), when marine mammals are detected within or about to enter a designated safety radius corresponding to 180–dB isopleths. The MMVOs will continue to maintain watch to determine when the animal(s) are outside the safety radius, and airgun operations will not resume until the animal has left that zone. The predicted distances for the safety radii are listed according to the sound source, water depth, and received isopleth in Table 1.

During seismic operations in the northeast Pacific Ocean, at least three visual observers and one bioacoustician will be based aboard the *Langseth*. MMVOs will be appointed by L-DEO with NMFS' concurrence. At least two MMVOs (except during meal times) will monitor the safety radii for marine mammals during daytime operations and nighttime startups of the airguns. The use of two simultaneous MMVOs will increase the proportion of the animals present near the source vessel that are detected. The MMVO(s) will be on duty in shifts of duration no longer

than 4 hours. The vessel crew will also be instructed to assist in detecting marine mammals and implementing mitigation requirements (if practical). Before the start of the seismic survey the crew will be given additional instruction regarding how to do so.

The *Langseth*'s high observation tower is a suitable platform for conducting marine mammal and turtle observations. When stationed on the observation platform, the MMOV's eye level will be approximately 18 m (59 ft) above sea level, providing a panoramic view around the entire vessel. During the daytime, the MMO(s) will scan the area around the vessel systematically using reticle binoculars (e.g., 7 x 50 Fujinon), big-eye binoculars (25 x 150), and the naked eye. The platform of the *Langseth* is high enough that, in good weather, MMOs can see out to 8.9 nm (16.5 km, 10.2 mi). All of the 180–dB safety radii that MMOs will monitor during ramp-ups and power-downs are less than 2 km (1.1 nm, 1.2 mi).

MMOs will use night vision devices (NVDs) (ITT F500 Series Generation 3 binocular-image intensifier or equivalent), during dusk or nighttime, when required. Finally, L-DEO will provide laser rangefinding binoculars (Leica LRF 1200 laser rangefinder or equivalent) to MMOs to assist with distance estimation. MMOs estimate that visual detection from the ship is between 150 and 250 m (492 and 820 ft) using NVDs and about 30 m (98.4 ft) with the naked eye, which are affected by ambient lighting conditions, sea state, and thermal factors.

Passive Acoustic Monitoring

PAM will take place to complement the visual monitoring program. Acoustic monitoring can be used in addition to visual observations to improve detection, identification, localization, and tracking of cetaceans. It is only useful when marine mammals call, but it can be effective either by day or by night and does not depend on good visibility. The acoustic monitoring will serve to alert visual observers when vocalizing cetaceans are detected. It will be monitored in real time so visual observers can be advised when cetaceans are detected. When bearings (primary and mirror-image) to calling cetacean(s) are determined, the bearings will be relayed to the visual observer to help him/her sight the calling animal(s).

The PAM system consists of hardware (i.e., hydrophones) and software. The ''wet end'' of the system consists of a low-noise, towed hydrophone array that is connected to the vessel by a ''hairy'' faired cable. The array will be deployed from a winch located on the back deck. A deck cable will connect from the winch to the main computer lab where the acoustic station and signal condition and processing system will be located. The lead-in from the hydrophone array is approximately 400 m (1,312 ft) long, and the active part of the hydrophone is approximately 56 m (184 ft) long. The hydrophone array is typically towed at depths of 20 m (65.6 ft).

The towed hydrophone array will be monitored 24 hours per day while at the survey area during airgun operations and also during most periods when the *Langseth* is underway with the airguns not operating. One MMO and/or bioacoustician will monitor the acoustic detection system at any one time, by listening to the signals from two channels via headphones and/or speakers and watching the real time spectrographic display for frequency ranges produced by cetaceans. MMOs monitoring the acoustical data will be on shift for 1–6 hours. Of the three observers required on board, one will have primarily responsibility for PAM during the seismic survey. However, all MMOs are expected to rotate through the PAM position, although the most experienced with acoustics will be on PAM duty more frequently.

When a vocalization is detected, the acoustic MMO will, if visual observations are in progress, contact the MMVO immediately to alert him/her to the presence of the vocalizing marine mammal(s) (if they have not already been seen), and to allow a power down or shutdown to be initiated, if required. The information regarding the call will be entered into a database. The data to be entered includes an acoustic encounter identification number, whether it was linked with a visual sighting, date, time when first and last heard and whenever any additional information was recorded, position and water depth when first detected, bearing if determinable, species or species group (e.g., unidentified dolphin, sperm whale), types and nature of sounds heard (e.g., clicks, continuous, sporadic, whistles, creaks, burst pulses, strength of signal, etc.), and any other notable information. The acoustic detection can also be recorded for further analysis.

Speed or Course Alteration - If a marine mammal is detected outside the safety radius and, based on its position and the relative motion, is likely to enter the safety radius or exclusion zone (EZ), the vessel's speed and/or direct course may be changed. This would be done if practicable while minimizing the effect on the planned science objectives. The activities and movements of the marine mammal(s) (relative to the seismic vessel) will then be closely monitored to determine whether the animals is approaching the applicable EZ. If the animal appears likely to enter the EZ, further mitigation actions will be taken, i.e., either further course alterations or a power down or shut down of the airguns. Typically, during seismic operations, major course and speed adjustments are often impractical when towing long seismic streamers and large source arrays, thus alternative mitigation measures (see below) will need to be implemented.

Power-down Procedures - A power-down involves reducing the number of operating airguns in use to minimize the exclusion zone, so that marine mammals are no longer in or about to enter this zone. A power-down of the airgun array to a reduced number of operating airguns may also occur when the vessel is moving from one seismic line to another. During a power down for mitigation, one airgun will be operated. The continued operation of at least one airgun is intended to alert marine mammals to the presence of the seismic vessel in the area. In contrast, a shut down occurs when all airgun activity is suspended.

If a marine mammal is detected outside the safety radii but is likely to enter it, and if the vessel's speed and/or course cannot be changed to avoid the animal(s) entering the EZ, the airguns will be powered down to a single airgun before the animal is within the EZ. Likewise, if a mammal is already within the EZ when first detected, the airguns will be powered down immediately. During a power down of the airgun array, the 40–in^3 airgun will be operated. If a marine mammal is detected within or near the smaller safety radii around that single airgun (see Table 1 above), all airguns will be shutdown (see next subsection).

Following a power down, airgun activity will not resume until the marine mammal is outside the safety radius for the full array. The animal will be considered to have cleared the safety radius if it:

(1) Is visually observed to have left the safety radius; or

(2) Has not been seen within the safety radius for 15 minutes in the case of small odontocetes or pinnipeds; or

(3) Has not been seen within the safety radius for 30 minutes in the case of mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, and beaked whales; or

During airgun operations following a power-down (or shut-down) and subsequent animal departure as above, the airgun array will resume operations following ramp-up procedures described below.

Shutdown Procedures - The operating airgun(s) will be shut down if a marine mammal is detected within or approaching the safety radius for the then-operating single 40 in^3 airgun while the airgun array is at full volume or during a power down. Airgun activity will not resume until the marine mammal has cleared the safety radius or until the MMO is confident that the animal has left the vicinity of the vessel. Criteria for judging that the animal has cleared the safety radius will be as described in the preceding subsection.

Ramp-up Procedures - A ramp-up procedure will be followed when the airgun array begins operating after more than nine minutes without airgun operations or when a power-down has exceeded nine minutes. This period is based on the modeled 180–dB radius for the 36–airgun array (see Table 1) in relation to the planned speed of the *Langseth* while shooting. Similar periods (approximately eight to 10 minutes) were used during previous L-DEO surveys.

Ramp-up will begin with the smallest airgun in the array (40 in^3). Airguns will be added in a sequence such that the source level of the array will increase in steps not exceeding 6 dB per 5–minute period over a total duration of approximately 20 to 25 minutes. During ramp-up, the MMVOs will monitor the safety radius, and if marine mammals are sighted, a course/speed change, power down, or shutdown will be implemented as though the full array were operational.

If the complete safety radius has not been visible for at least 30 minutes prior to the start of operations in either daylight or nighttime, ramp-up will not commence unless at least one airgun (40 in^3 or similar) has been operating during the interruption of seismic survey operations. Given these provisions, it is likely that the airgun array will not be ramped up from a complete shut down at night or in thick fog, because the other part of the safety radius for that array will not be visible during those conditions. If one airgun has operated during a power down period, ramp up to full power will be permissible at night or in poor visibility, on the assumption that marine mammals will be alerted to the approaching seismic vessel by the sounds from the single airgun and have the opportunity to move away. Ramp up of the airguns will not be initiated if a marine mammal is sighted within or near the applicable safety radius during the day or close to the vessel at night.

MMVO Data and Documentation

MMVOs will record data to estimate the numbers of marine mammals exposed to various received sound levels and to document any apparent disturbance reactions or lack thereof. Data will be used to estimate the numbers of mammals potentially ''taken'' by harassment. They will also provide information needed to order a power-down or shutdown of airguns when marine mammals are within or near the relevant safety radius. When a sighting is made, the following information about the sighting will be recorded:

(1) Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, sighting cue, apparent reaction to the airguns or vessel (e.g., none, avoidance, approach, paralleling, etc. and including responses to ramp-up), and behavioral pace.

(2) Time, location, heading, speed, activity of the vessel (including number of airguns operating and whether in state or ramp-up, power-down, or full power), sea state, visibility, cloud cover, and sun glare.

The data listed under (2) will also be recorded at the start and end of each observation watch and during a watch, whenever there is a change in one or more of the variables.

All observations, as well as information regarding airgun power down and shutdown, will be recorded in a standardized format. Data will be entered into a custom electronic database. The accuracy of data will be verified by computerized data validity checks as the data are entered and by subsequent manual checking of the database. Preliminary reports will be prepared during the field program and summaries forwarded to the operating institution's shore facility and to NSF weekly or more frequently. MMO observations will provide the following information:

(1) The basis for decisions about powering down or shutting down airgun arrays.

(2) Information needed to estimate the number of marine mammals potentially ''taken by harassment.'' These data will be reported to NMFS per terms of MMPA authorizations or regulations.

(3) Data on the occurrence, distribution, and activities of marine mammals in the area where the seismic study is conducted.

(4) Data on the behavior and movement patterns of marine mammals seen at times with and without seismic activity.

Reporting

A draft report will be submitted to NMFS within 90 days after expiration of the IHA. The report will describe the operations that were conducted and sightings of marine mammals near the operations. The report will be submitted to NMFS, providing full documentation of methods, results, and interpretation pertaining to all monitoring and mitigation. The 90–day draft report will summarize the dates and locations of seismic operations (dates, times, locations, heading, speed, weather, sea state, activities), and all marine mammal sightings (dates, times, locations, species, behavior, number of animals, associated seismic survey activities).

The report will also include the estimates of the amount and nature of potential ''take'' of marine mammals by harassment or in other ways, as well as a description of the implementation and effectiveness of the monitoring and mitigation measures of the IHA and Biological Opinion's (BiOp) Incidental Take Statement. L-DEO is then required to submit a final report within 30 days after receiving comments from NMFS on the draft report.

Endangered Species Act (ESA)

Pursuant to section 7 of the ESA, NSF has consulted with the NMFS, Office of Protected Resources, Endangered Species Division on this seismic survey. NMFS Headquarters' Office of Protected Resources, Permits, Conservation, and Education Division has also consulted internally pursuant to section 7 of the ESA on the issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity. On August 18, 2009, NMFS issued a BiOp and concluded that the issuance of an IHA is not likely to jeopardize the continued existence of blue, fin, sei, humpback, and sperm whales, leatherback sea turtles, as well as listed salmonids. The BiOp also concluded that the proposed activities would have no effect on critical habitat, as the Canadian government has no such designation within the action area. Finally, NMFS has incorporated the Relevant Terms and Conditions of the Incidental Take Statement in the BiOp into the IHA.

National Environmental Policy Act (NEPA)

On September 22, 2005 (70 FR 55630), NSF published a notice of intent to prepare a Programmatic Environmental Impact Statement/Overseas Environmental Impact Statement (EIS/OES) to evaluate the potential environmental impacts associated with the use of seismic sources in support of

NSF-funded research by U.S. academic scientists. NMFS agreed to be a cooperating agency in the preparation of the EIS/OEIS. This EIS/OEIS has not been completed.

Therefore, in order to meet NSF's and NMFS' NEPA requirements for the proposed activity and issuance of an IHA to L-DEO, the NSF has prepared an EA that is specific to the marine geophysical survey conducted by the R/V *Marcus G. Langseth* in the northeast Pacific Ocean. NSF's EA, titled, Marine Seismic Survey in the Northeast Pacific Ocean, August/September, 2009 is based, in part, on an environmental assessment report (hereinafter, Report), prepared by LGL Limited environmental research associates (LGL) on behalf of NSF, titled, ''Environmental Assessment of a Marine Geophysical Survey by the R/V *Marcus G. Langseth* in the Northeast Pacific Ocean, August September, 2009.'' The EA, and Report, specifically analyze the fact that L-DEO intends to obtain an IHA from NMFS in order to conduct the seismic survey. The EA evaluates the impacts of potential incidental Level B harassment resulting from the specified activity in the specified geographic region. The NSF has made a Finding of No Significant Impact (FONSI) determination based on information contained within its EA and Report, that implementation of the proposed action is not a major Federal action having significant effects on the environment within the meaning of NEPA. NSF determined, therefore, that an environmental impact statement would not be prepared.

On May 8, 2009 (74 FR 2163), NMFS noted that the NSF had prepared an EA for the northeast Pacific Ocean surveys and made this EA, and the Report, available upon request. NMFS has independently reviewed the information contained in NSF's EA and determined that the NSF EA describes the proposed action alternative and evaluates and discloses the potential impacts on marine mammals, endangered species, and other marine life that could be impacted by the preferred alternative and the other alternatives. Accordingly, NMFS has adopted the NSF EA, and incorporated Report, under 40 CFR 1506.3 and made its own FONSI. The NMFS FONSI also takes into consideration additional mitigation measures required by the IHA that are not in NSF's EA or Report. Therefore, NMFS has determined that it is not necessary to issue a new EA, supplemental EA or an EIS for the issuance of an IHA to L-DEO for this activity. A copy of the EA and the NMFS FONSI for this activity is available upon request (see **ADDRESSES**).

Determinations

NMFS has determined that the impact of conducting the seismic survey in the northeast Pacific Ocean may result, at worst, in a temporary modification in behavior (Level B harassment) of small numbers of 33 species of cetaceans. Though NMFS believes that take of the requested numbers is unlikely, we still find these numbers small relative to the population sizes. Further, this activity is not expected to adversely affect any species or stock through affects on annual recruitment or survival. Therefore, NMFS has determined that the activity will have a negligible impact on the affected species or stocks.

The provision requiring that the activity not have an unmitigable adverse impact on the availability of the affected species or stock for subsistence uses is not implicated for this proposed action. There is no subsistence harvest of marine mammals in the proposed research area; therefore, there will be no impact of the activity on the availability of the species or stocks of marine mammals for subsistence uses.

The negligible impact determination is supported by: (1) the likelihood that, given sufficient warning through relatively slow ship speed, marine mammals are expected to move away from a noise source that is annoying prior to it becoming potentially injurious; (2) the fact that marine mammals would have to be closer than 40 m (131 ft) in deep water, when a single airgun is in use from the vessel to be exposed to levels of sound (180 dB) believed to have even a minimal chance of causing TTS; (3) the fact that marine mammals would have to be closer than 950 m (0.5 nm) in deep water, when the full array is in use at a 9–15 m (29.5–49.2 ft) tow depth from the vessel to be exposed to levels of sound (180 dB) believed to have even a minimal chance of causing TTS; (4) the likelihood that marine mammal detection ability by trained observers is good at those distances from the vessel; (5) the use of PAM, which is effective out to tens of km, will assist in the detection of vocalizing marine mammals at greater distances from the vessel; (6) the incorporation of other required mitigation measures (i.e., ramp-up, power-down, and shutdown); and (7) the limited duration of the seismic survey in the study area (approximately 39 days). As a result, no take by injury or death is anticipated, and the potential for temporary or permanent hearing impairment is very low and will be avoided through the incorporation of the required monitoring and mitigation measures.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals in the vicinity of the survey activity, the number of potential harassment takings is estimated to be small, relative to the affected species and stock sizes, and has been mitigated to the lowest level practicable through incorporation of the measures mentioned previously in this document.

Authorization

As a result of these determinations, NMFS has issued an IHA to L-DEO for conducting a marine geophysical survey in the northeast Pacific Ocean in August October, 2009, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: August 19, 2009.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

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BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with July anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department also received a request to revoke one antidumping duty order in part.

DATES: *Effective Date:* August 25, 2009.

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–4697.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b), for administrative reviews of various antidumping and countervailing

duty orders and findings with July anniversary dates. The Department also received a timely request to revoke in part the antidumping duty order on Certain Frozen Warmwater Shrimp from India with respect to one producer/exporter.

Notice of No Sales

Under 19 CFR 351.213(d)(3), the Department may rescind a review where there are no exports, sales, or entries of subject merchandise during the respective period of review (''POR'') listed below. If a producer or exporter named in this initiation notice had no exports, sales, or entries during the POR, it should notify the Department within 30 days of publication of this notice in the **Federal Register**. The Department will consider rescinding the review only if the producer or exporter, as appropriate, submits a properly filed and timely statement certifying that it had no exports, sales, or entries of subject merchandise during the POR. All submissions must be made in accordance with 19 CFR 351.303 and are subject to verification in accordance with section 782(i) of the Tariff Act of 1930, as amended (''the Act''). Six copies of the submission should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Further, in accordance with 19 CFR 351.303(f)(1)(i), a copy of each request must be served on every party on the Department's service list.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews, the Department intends to select respondents based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports during the POR. We intend to release the CBP data under Administrative Protective Order (''APO'') to all parties having an APO within five days of publication of this initiation notice and to make our decision regarding respondent selection within 20 days of publication of this **Federal Register** notice.

The Department invites comments regarding the CBP data and respondent selection within 10 calendar days of publication of this **Federal Register** notice.

Separate Rates

In proceedings involving non–market economy (''NME'') countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991), as amplified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2,1994). In accordance with the separate–rates criteria, the Department assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

All firms listed below that wish to qualify for separate–rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate–rate application or certification, as described below. For these administrative reviews, in order to demonstrate separate–rate eligibility, the Department requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on the Department's website at http://www.trade.gov/ia on the date of publication of this **Federal Register**. In responding to the certification, please follow the ''Instructions for Filing the Certification'' in the Separate Rate Certification. Separate Rate Certifications are due to the Department no later than 30 calendar days of publication of this **Federal Register** notice. The deadline and requirement for submitting a Certification applies equally to NME–owned firms, wholly foreign–owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment of the proceeding [1] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name,[2] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. The Separate Rate Application will be available on the Department's website at http://ia.ita.doc.gov/nme/nme–sep-rate.html on the date of publication of this **Federal Register** notice. In responding to the Separate Rate Status Application, refer to the instructions contained in the application. Separate Rate Status Applications are due to the Department no later than 60 calendar days of publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Status Application applies equally to NME–owned firms, wholly foreign–owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

For exporters and producers who submit a separate–rate status application or certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate–rate status unless they respond to all parts of the questionnaire as mandatory respondents.

Initiation of Reviews

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than July 31, 2010.

[1] Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceedings (*e.g.*, an ongoing administrative review, new shipper review, *etc.*) and entities that lost their separate rate in the most recently complete segment of the proceeding in which they participated.

[2] Only changes to the official company name, rather than trade names, need to be addressed via a Separate Rate Application. Information regarding new trade names may be submitted via a Separate Rate Application.

Antidumping Duty Proceedings	Period to be Reviewed
FINLAND: Purified Carboxymethylcellulose.	
A–405–803	7/1/08 - 6/30/09
CP Kelco Oy.	
INDIA: Certain Frozen Warmwater Shrimp[3].	
A–533–840	2/1/08 - 1/31/09
INDIA: Polyethylene Terephthalate (PET) Film.	
A–533–824	7/1/08 - 6/30/09
Jindal Poly Films Limited of India.	
ITALY: Certain Pasta.	
A–475–818	7/1/08 - 6/30/09
Domenico Paone fu Erasmo S.p.A..	
Fasolino Foods Company, Inc. and its affiliate Euro–American Foods Group, Inc..	
Industria Alimentare Colavita, S.p.A..	
P.A.M. S.p.A..	
Pasta Lensi S.r.l..	
Pastificio Attilio Mastromauro–Pasta Granoro S.r.L.	
Pastificio Lucio Garafalo S.p.A..	
MEXICO: Purified Carboxymethylcellulose.	
A–201–834	7/1/08 - 6/30/09
Quimica Amtex, S.A. de C.V..	
MEXICO: Stainless Steel Sheet and Strip in Coils.	
A–201–822	7/1/08 - 6/30/09
ThyssenKrupp Mexinox S.A. de C.V..	
RUSSIAN FEDERATION: Solid Urea.	
A–821–801	7/1/08 - 6/30/09
OJSC MCC EuroChem, and production affiliates, OJSC Nevinnomyssky Azot And OJSC Novomoskovskaya Azot.	
TAIWAN: Polyethylene Terephthalate Film, Sheet and Strip.	
A–583–837	7/1/08 - 6/30/09
NanYa Plastics Corporation, Ltd..	
Shinkong Synthetic Fibers Corporation.	
TAIWAN: Stainless Steel Sheet and Strip in Coils.	
A–583–831	7/1/08 - 6/30/09
Ta Chen Stainless Pipe Co., Ltd..	
Chia Far Industrial Factory Co., Ltd..	
China Steel Corporation.	
Dah Shi Metal Industrial Co., Ltd..	
KNS Enterprise Co., Ltd..	
Lih Chan Steel Co., Ltd..	
Tang Eng Iron Works.	
PFP Taiwan Co., Ltd..	
Yieh Loong Enterprise Co., Ltd. (aka Chung Hung Steel Co., Ltd.).	
Yieh Trading Corp..	
Tibest International, Inc..	
Goang Jau Shing Enterprise Co., Ltd..	
Yieh Mau Corp..	
Maytun International Corp..	
Shih Yuan Stainless Steel Enterprise Co., Ltd..	
Chien Shing Stainless Co..	
Chain Chon Industrial Co., Ltd..	
Emerdex Stainless Flat–Rolled Products, Inc..	
Emerdex Stainless Steel, Inc..	
Emerdex Group.	
Waterson Corp..	
Yieh United Steel Corporation.	
Tung Mung Development Co., Ltd./Ta Chen Stainless Pipe Co., Ltd.[4].	
THE NETHERLANDS: Purified Carboxymethylcellulose.	
A–421–811	7/1/08 - 6/30/09
CP Kelco BV.	
Akzo Nobel Functional Chemicals, B.V..	
THE PEOPLE'S REPUBLIC OF CHINA: Circular Welded Carbon Quality Steel Pipe[5].	
A–570–910	1/15/08 - 6/30/09
Baoshan Iron & Steel Co., Ltd..	
Jiangsu Yulong Steel Pipe Co., Ltd..	
Liaoning Northern Steel Pipe Co., Ltd..	
Hunan Hengyang Steel Tube (Group) Co., Ltd..	
CNOOC Kingland Pipeline Co., Ltd..	
Jiangsu Changbao Steel Tube Co., Ltd..	
Wuxi Fastube Industry Co., Ltd..	
Weifang East Steel Pipe Co., Ltd..	
Tianjin Shuangjie Steel Pipe Co., Ltd..	
Zhejiang Kingland Pipeline Industry Co., Ltd..	
SteelFORCE Far East Ltd..	
Tianjin Baolai International Trade Co., Ltd..	

Antidumping Duty Proceedings	Period to be Reviewed
Shanghai Zhongyou TIPO Steel Pipe Co., Ltd..	
Sino Link SCS (Asia) Limited.	
THE PEOPLE'S REPUBLIC OF CHINA: Persulfates[6].	
A–570–847	7/1/08 - 6/30/09
Shanghai AJ Import & Export Corporation.	
United Initiators (Shanghai) Co., Ltd. (previously known as Degussa–AJ (Shanghai) Initiators Co., Ltd.).	
THE PEOPLE'S REPUBLIC OF CHINA: Saccharin[7].	
A–570–878	7/1/08 - 6/30/09
Keifeng Xinhua Fine Chemical Factory.	
Shanghai Fortune Chemical Co., Ltd..	
Countervailing Duty Proceedings.	
INDIA: Polyethylene Terephthalate (PET) Film.	
C–533–825	1/1/08 - 12/31/08
Jindal Poly Films Limited of India.	
ITALY: Certain Pasta.	
C–475–819	1/1/08 - 12/31/08
Agritalia S.r.L..	
De Matteis Agroalimentare S.p.A..	
F. Divella S.p.A..	
F.lli De Cecco di Filippo Fara San Martino S.p.A..	
Pastificio Lucio Garofalo S.p.A..	
THE PEOPLE'S REPUBLIC OF CHINA: Circular Welded Carbon Quality Steel Pipe.	
C–570–911	11/13/07 - 12/31/08
Baoshan Iron & Steel Co., Ltd..	
Jiangsu Yulong Steel Pipe Co., Ltd..	
Liaoning Northern Steel Pipe Co., Ltd..	
Hunan Hengyang Steel Tube (Group) Co., Ltd..	
CNOOC Kingland Pipeline Co., Ltd..	
Jiangsu Changbao Steel Tube Co., Ltd..	
Wuxi Fastube Industry Co., Ltd..	
Weifang East Steel Pipe Co., Ltd..	
Tianjin Shuangjie Steel Pipe Co., Ltd..	
Zhejiang Kingland Pipeline Industry Co., Ltd..	
Suspension Agreements.	
None..	

[3] On April 7, 2009, the Department published a notice of initiation of administrative reviews for the orders covering certain frozen warmwater shrimp (shrimp) from Brazil, India, and Thailand. *See Certain Frozen Warmwater Shrimp from Brazil, India and Thailand: Notice of Initiation of Administrative Reviews*, 74 FR 15699 (April 7, 2009). This notice should have also indicated that the Department received a timely request to revoke, in part, the antidumping duty order on shrimp from India with respect to Devi Sea Foods Limited, an exporter and producer of shrimp from India.

[4] The Department received a request for an administrative review of the antidumping order on stainless steel sheet and strip in coils (''SSSSC'') from Taiwan with respect to Tung Mung Development Co., Ltd. (''Tung Mung'') (as to subject merchandise as set forth in *Notice of Amended Final Determination in Accordance With Court Decision of the Antidumping Duty Investigation of Stainless Steel Sheet and Strip in Coils From Taiwan*, 69 FR 67311 (Nov. 17, 2004)). SSSSC produced and exported by Tung Mung was excluded from this order effective October 16, 2002. Id. However, exports of SSSSC produced by Tung Mung and exported to the United States by Ta Chen Stainless Pipe Co., Ltd. (''Ta Chen'') remain subject to the order, and thus this administrative review covers exports of SSSSC produced by Tung Mung in Taiwan and exported to the United States by Ta Chen.

[5] If one of the above named companies does not qualify for a separate rate, all other exporters of Circular Welded Carbon Quality Steel Pipe from the People's Republic of China (''PRC'') who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[6] If one of the above named companies does not qualify for a separate rate, all other exporters of Persulfates from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[7] If one of the above named companies does not qualify for a separate rate, all other exporters of Saccahrin from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia v.United States*, 291 F.3d 806 (Fed. Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures*, 73 FR 3634 (January 22, 2008). Those procedures apply to administrative reviews included in this notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that they meet the requirements of these procedures (*e.g.*, the filing of separate letters of appearance as discussed at 19 CFR 351.103(d)).

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 USC 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: August 19, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–20500 Filed 8–24–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[FAR Case 2009–009; Docket 2009–0011, Sequence 1]

Federal Acquisition Regulation; FAR Case 2009–009, American Recovery and Reinvestment Act of 2009 (the Recovery Act)—Reporting Requirements

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) are issuing this notice to inform Federal contractors that the Recovery Accountability and Transparency Board (''Board'') has announced the availability of registration at *federalreporting.gov*. Federal contractors required to report on their use of Recovery Act funds by FAR clause 52.204–11 are encouraged to register early.

DATES: *Effective Date*: August 25, 2009.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Ernest Woodson, Procurement Analyst, at (202) 501–3775. Please cite Notice to Federal contractors on registration at *federalreporting.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

On March 31, 2009, the Councils published an interim rule in the **Federal Register**, FAR Case 2009–009, American Recovery and Reinvestment Act of 2009 (the Recovery Act)—Reporting Requirements (74 FR 14639). The rule implements section 1512 of Public Law 111–5, the American Recovery and Reinvestment Act of 2009 (the ''Recovery Act''), which requires Federal contractors that receive awards (or modifications to existing awards) funded, in whole or in part, by the Recovery Act to report quarterly on the use of the funds at *federalreporting.gov*.

To comply with the reporting required by FAR 52.204–11, Federal contractors must first register at *federalreporting.gov*. Registration is now open to Federal contractors. The reporting tool will be available on October 1, 2009. Reports, which are due October 10, 2009, can only be submitted once registration is authorized. For more information on the registration and authorization process, go to *federalreporting.gov*. For information regarding the Paperwork Reduction Act, see Information Collection Request (ICR) Reference Number 200907–0430–001 and OMB Control Number 0430–0002 available at *http://www.reginfo.gov/public/do/PRAMain* (select ''Recovery Accountability and Transparency Board'' from the ''Select Agency'' drop down menu and submit).

Dated: August 19, 2009.

David A. Drabkin,

Deputy Associate Administrator and Senior Procurement Executive, Office of Acquisition Policy.

[FR Doc. E9–20351 Filed 8–24–09; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent to Grant a Partially Exclusive Patent License; Sanofi Pasteur S.A.

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Sanofi Pasteur S.A., a revocable, nonassignable, partially exclusive license to practice worldwide the Government owned inventions described in U.S. Patent Application Serial No. 11/340,003 with inventor Stephen J. Savarino filed on 10 January 2006, entitled ''Adhesin as Immunogen Against Enterotoxigenic *E. coli*'' and its related PCT/US2006/000660 National Phase applications in Australia, Canada, Europe, Japan and India filed 11 July 2007; and U.S. Patent Application Serial No. 11/988,598 with inventors Stephen J. Savarino, Randall K. Holmes and Michael Jobling filed on 11 January 2007, entitled ''Adhesin-Enterotoxin Chimera Based Composition Against Enterotoxigenic *E. coli*'' and its related PCT/US2007/000712 National Phase applications in Australia, Canada, Europe, and Japan filed 10 January 2008 in the field of ''Protection against ETEC (Enterotoxigenic *Escherichia Coli*) associated diarrhea in both endemic zones and for travelers, including the military.''

DATES: Anyone wishing to object to the grant of this license has fifteen (15) days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Office of Technology Transfer, Naval Medical Research Center, 503 Robert Grant Ave., Silver Spring, MD 20910–7500, telephone (301) 319–7428.

ADDRESSES: Written objections are to be filed with the Office of Technology Transfer, Naval Medical Research Center, 503 Robert Grant Ave., Silver Spring, MD 20910–7500.

FOR FURTHER INFORMATION CONTACT: Dr. Charles Schlagel, Director, Office of Technology Transfer, Naval Medical Research Center, 503 Robert Grant Ave., Silver Spring, MD 20910–7500, telephone (301) 319–7428.

Dated: August 18, 2009.

A.M. Vallandingham,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E9–20363 Filed 8–24–09; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education; Impact Aid Program—American Recovery and Reinvestment Act of 2009—Impact Aid Discretionary Construction Program

ACTION: Notice inviting applications for new awards under the American Recovery and Reinvestment Act of 2009—Impact Aid Discretionary Construction Program; Correction.

SUMMARY: On August 17, 2009, we published in the **Federal Register** (74 FR 41407) a notice inviting applications for new awards under the American Recovery and Reinvestment Act of 2009—Impact Aid Discretionary Construction Program. The notice specified a deadline of October 1, 2009 for the submission of applications. Since publication, however, we have learned that the Department's e-Application system will be shut down on October 1 in connection with the Department's transition of its systems to the new fiscal year, which begins on October 1. Therefore, we are correcting the deadline for the submission of applications to October 8, 2009.

On page 41407, first column, the date listed for *Deadline for Transmittal of Applications* is corrected to read ''October 8, 2009.'' On page 41407, first

column, the date listed for *Deadline for Intergovernmental Review* is corrected to read ''December 7, 2009.'' On page 41408, first column, the date listed for *Deadline for Transmittal of Applications* is corrected to read ''October 8, 2009.'' On page 41408, first column, the date listed for *Deadline for Intergovernmental Review* is corrected to read ''December 7, 2009.''

FOR FURTHER INFORMATION CONTACT: Kristen Walls-Rivas, Impact Aid Program, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3C155, Washington, DC 20202–6244. *Telephone:* (202) 260–3858 or by *e-mail: Impact.Aid@ed.gov.*

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: August 20, 2009.

Thelma Meléndez de Santa Ana,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. E9–20502 Filed 8–24–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 24, 2009.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or send e-mail to *oira_submission@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: August 19, 2009.

Angela C. Arrington,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.

Title: Report of Dispute Resolution Under Part B of the Individuals with Disabilities Education Act.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 60.

Burden Hours: 4,200.

Abstract: This package provides instructions and forms necessary for States to report the number of written, signed complaints; mediation requests; due process complaints; and expedited due process complaints and the status of these actions with regards to children served under Part B of the Individuals with Disabilities Education Act (IDEA). The form satisfies reporting requirements and is used by the Office of Special Education Programs (OSEP) to monitor SEAs and for Congressional reporting.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 4064. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–20476 Filed 8–24–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 24, 2009.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, *Attention:* Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington,

DC 20503, be faxed to (202) 395–5806 or send e-mail to *oira_submission@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: August 19, 2009.

Angela C. Arrington,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.
Title: Report of Children with Disabilities Subject To Disciplinary Removal.
Frequency: Annually.
Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 60.
Burden Hours: 228,048.

Abstract: This package provides instructions and forms necessary for States to report the number of children with disabilities who are receiving special education and related services under the Individuals with Disabilities Education Act (IDEA), Part B, but were removed from their special education placements due to disciplinary offenses. The form satisfies reporting requirements and is used by the Office of Special Education Programs (OSEP) to monitor SEAs and for Congressional reporting.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4062. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–20478 Filed 8–24–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 24, 2009.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, *Attention:* Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or send e-mail to *oira_submission@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: August 19, 2009.

Angela C. Arrington,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.
Title: Grantee Reporting Form—Rehabilitative Services Administration (RSA) Annual Payback Report.
Frequency: Annually.
Affected Public: Businesses or other for-profit; Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 350.
Burden Hours: 400.

Abstract: Under section 302 of the Rehabilitation Act of 1973, as amended (Act), RSA has the authority to provide financial assistance, through academic institutions, to students seeking a career in rehabilitative services. Students who receive scholarships under this program are required to work within the public rehabilitation program, such as with a state vocational rehabilitation agency, or an agency or organization that has a service arrangement with a state vocational rehabilitation. The student is expected to work two years in such settings for every year of full-time scholarship support. Section 302(b)(2)(C) of the Act requires the academic institutions (*i.e.* grantees) that administer an RSA Long-Term Training program to track the employment status and location of form scholars supported under their grants in order to ensure that students are meeting the payback

requirement. Program regulations at 34 CFR 386.34 require each grantee to establish and maintain a tracking system on current and former RSA scholars for this purpose.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4053. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–20481 Filed 8–24–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 24, 2009.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or send e-mail to *oira_submission@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: August 19, 2009.

Angela C. Arrington,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.

Title: Report of the Participation and Performance of Students with Disabilities on State Assessments by Content Area, Grade, and Type of Assessment.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 60.

Burden Hours: 3,615.

Abstract: This package provides instructions and forms necessary for States to report the number of students with disabilities who are receiving special education and related services under the Individuals with Disabilities Education Act (IDEA), Part B, that are participating in state assessments and their performance on those assessments. The form satisfies reporting requirements and is used by the Office of Special Education Programs (OSEP) to monitor SEAs and for Congressional reporting.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4063. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–20480 Filed 8–24–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 24, 2009.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, *Attention:* Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or send e-mail to *oira_submission@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Information Collection Clearance Division, Regulatory Information

Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: August 19, 2009.

Angela C. Arrington,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.
Title: Personnel (in Full-Time Equivalency of Assignment) Employed To Provide Special Education and Related Services for Children with Disabilities.
Frequency: Annually.
Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 60.
Burden Hours: 7,314.

Abstract: This package provides instructions and forms necessary for States to report the number of personnel employed and whether they are highly qualified for their position in providing special education and related services to children with disabilities under the Individuals with Disabilities Education Act (IDEA), Part B. The form satisfies reporting requirements and is used by the Office of Special Education Programs (OSEP) to monitor SEAs and for Congressional reporting.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4060. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–20479 Filed 8–24–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 24, 2009.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, *Attention:* Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or send e-mail to *oira_submission@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.,* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: August 19, 2009.

Angela C. Arrington,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.
Title: Report of Children with Disabilities Exiting Special Education.
Frequency: Annually.
Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 60.
Burden Hours: 69,048.

Abstract: This package provides instructions and forms necessary for States to report the number of children with disabilities exiting special education and relating services under the Individuals with Disabilities Education Act (IDEA), part B. The form satisfies reporting requirements and is used by the Office of Special Education Programs (OSEP) to monitor SEAs and for Congressional reporting.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4061. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–20477 Filed 8–24–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 24, 2009.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, *Attention:* Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or send e-mail to *oira_submission@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.,* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: August 19, 2009.

Angela C. Arrington,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.

Title: Report of Children Receiving Special Education Under part B of the Individuals with Disabilities Education Act (IDEA), as Amended.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 60.

Burden Hours: 30,084.

Abstract: This package provides instructions and forms necessary for States to report the count of children with disabilities receiving special education and related services under IDEA, part B. The form satisfies reporting requirements and is used by the Office of Special Education Programs (OSEP) to monitor SEAs and for Congressional reporting.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4059. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–20444 Filed 8–24–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Committee on Foreign Medical Education and Accreditation Meeting

AGENCY: Department of Education.

What Is the Purpose of This Notice?

The purpose of this notice is to announce the upcoming meeting of the National Committee on Foreign Medical Education and Accreditation (NCFMEA). Parts of this meeting will be open to the public, and the public is invited to attend those portions.

When and Where Will the Meeting Take Place?

The public meeting will be held on Monday, September 14, 2009, from 8 a.m. until approximately 5 p.m. in the Barnard Auditorium, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202. Due to security restrictions, all attendees must pre-register with the Acting Committee Director in order to be admitted to the building on the day of the meeting. Please notify the contact person, listed below, prior to September 1, 2009 to pre-register.

What Assistance Will Be Provided to Individuals With Disabilities?

The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting, *e.g.,* interpreting service, assistive listening device, or materials in an alternate format, notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request received after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Who Is the Contact Person for the Meeting?

Please contact Dr. Rachael A. Shultz, the Acting Executive Director for the NCFMEA, if you have questions about the meeting. You may contact her at the U.S. Department of Education, 1990 K St., NW., Room 7127, Washington, DC 20006–8129, *telephone:* 202–219–7009, *fax:* 202–219–7005, *e-mail: Rachael.Shultz@ed.gov* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339.

What Are the Functions of the NCFMEA?

The NCFMEA was established by the Secretary of Education under Section 102 of the Higher Education Act of 1965, as amended. The NCFMEA's responsibilities are to:

- Upon request of a foreign country, evaluate the standards of accreditation applied to medical schools in that country; and
- Determine the comparability of those standards to standards for accreditation applied to United States medical schools. Comparability of the applicable accreditation standards is an eligibility requirement for foreign medical schools to participate in the Federal Family Education Loan program, 20 U.S.C. 1071 *et seq.*

What Items Will Be on the Agenda for Discussion at the Meeting?

The Committee will review the standards of accreditation applied to medical schools by several foreign

countries to determine whether those standards are comparable to the standards of accreditation applied to medical schools in the United States. Discussions of the standards of accreditation will be held in sessions open to the public. Discussions resulting in specific determinations of comparability are closed to the public in order that each country may be properly notified of the decision. The countries tentatively scheduled to be discussed at the meeting include: Australia/New Zealand, Costa Rica, Hungary, Ireland, Mexico, Poland, Saba, Slovakia, Sweden, and the United Kingdom. Beginning September 1, 2009, you may call the contact person listed above to obtain the final listing of the countries whose standards will be discussed during this meeting. The meeting agenda, as well as the staff analyses pertaining to this meeting, will be posted on the Department of Education's Web site at the following address: *http://www.ed.gov/about/bdscomm/list/ncfmea.html*. CDs containing PDF files of the staff reports will be available at the meeting at no charge to the attendees and otherwise upon request to the contact person listed above.

How May I Obtain Electronic Access to This Document?

You may view this document, as well as all other Department of Education documents published in the **Federal Register,** in text or Adobe Portable Document Format (PDF), on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Authority: 5 U.S.C. Appendix 2.

Delegation of Authority: The Secretary of Education has delegated authority to Daniel T. Madzelan, Director, Forecasting and Policy Analysis for the Office of Postsecondary Education, to perform the functions of the Assistant Secretary for Postsecondary Education.

Daniel T. Madzelan,

Director, Forecasting and Policy Analysis.

[FR Doc. E9–20396 Filed 8–24–09; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Meeting Notice

AGENCY: U.S. Election Assistance Commission.

ACTION: Notice of Virtual Public Forum for EAC Standards Board.

DATE AND TIME: Wednesday, September 9, 2009, 9 a.m. EDT through Friday, September 18, 2009, 9 p.m. EDT.

PLACE: EAC Standards Board Virtual Meeting Room at *http://www.eac.gov.* Once at the main page of EAC's Web site, viewers should click the link to the Standards Board Virtual Meeting Room. The virtual meeting room will open on Wednesday, September 9, 2009, at 9 a.m. EDT and will close on Friday, September 18, 2009, at 9 p.m. EDT. The site will be available 24 hours per day during that 9-day period.

PURPOSE: The EAC Standards Board will review and provide comment on five draft chapters of the Election Management Guidelines. The draft chapters contain best practices and recommendations regarding: Building Community Partnerships; Canvassing and Certifying an Election; Communicating with the Public; Conducting a Recount, and Provisional Ballots.

The EAC Standards Board Virtual Meeting Room was established to enable the Standards Board to conduct business in an efficient manner in a public forum, including being able to review and discuss draft documents, when it is not feasible for an in-person board meeting. The Standards Board will not take any votes or propose any resolutions during the 9-day forum of September 9–September 18, 2009. Members will post comments about the five draft chapters of the Election Management Guidelines.

This activity is open to the public. The public may view the proceedings of this special forum by visiting the EAC Standards Board Virtual Meeting Room at *http://www.eac.gov* at any time between Wednesday, September 9, 2009, 9 a.m. EDT and Friday, September 18, 2009, 9 p.m. EDT. The public also may view the five draft chapters of the Election Management Guidelines alternative, which will be posted on EAC'S Web site beginning September 9, 2009. The public may file written statements to the EAC Standards Board at *standardsboard@eac.gov.* Data on EAC's Web site is accessible to visitors with disabilities and meets the requirements of section 508 of the Rehabilitation Act.

PERSON TO CONTACT FOR INFORMATION: Bryan Whitener, *Telephone:* (202) 566–3100.

Alice Miller,

Chief Operating Officer, U.S. Election Assistance Commission.

[FR Doc. E9–20566 Filed 8–21–09; 4:15 pm]

BILLING CODE 6820–KF–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

AGENCY: U.S. Election Assistance Commission.

* * * * *

ACTION: Notice of Virtual Public Forum for EAC Board of Advisors.

DATE AND TIME: Wednesday, September 9, 2009, 9 a.m. EDT through Friday, September 18, 2009, 9 p.m. EDT.

PLACE: EAC Board of Advisors Virtual Meeting Room at *http://www.eac.gov.*

Once at the main page of EAC's website, viewers should click the link to the Board of Advisors Virtual Meeting Room. The virtual meeting room will open on Wednesday, September 9, 2009, at 9 a.m. EDT and will close on Friday, September 18, 2009, at 9 p.m. EDT. The site will be available 24 hours per day during that 9-day period.

PURPOSE: The EAC Board of Advisors will review and provide comment on five draft chapters of the Election Management Guidelines. The draft chapters contain best practices and recommendations regarding: Building Community Partnerships; Canvassing and Certifying an Election; Communicating with the Public; Conducting a Recount, and Provisional Ballots.

The EAC Board of Advisors Virtual Meeting Room was established to enable the Board of Advisors to conduct business in an efficient manner in a public forum, including being able to review and discuss draft documents, when it is not feasible for an in-person board meeting. The Board of Advisors will not take any votes or propose any resolutions during the 9-day forum of September 9–September 18, 2009. Members will post comments about the five draft chapters of the Election Management Guidelines.

This activity is open to the public. The public may view the proceedings of

this special forum by visiting the EAC Board of Advisors virtual meeting room at *http://www.eac.gov* at any time between Wednesday, September 9, 2009, 9 a.m. EDT and Friday, September 18, 2009, 9 p.m. EDT. The public also may view the five draft chapters of the Election Management Guidelines Alternative, which will be posted on EAC's Web site beginning September 9, 2009. The public may file written statements to the EAC Board of Advisors at *boardofadvisors@eac.gov.* Data on EAC's Web site is accessible to visitors with disabilities and meets the requirements of section 508 of the Rehabilitation Act.

PERSON TO CONTACT FOR INFORMATION: Bryan Whitener, Telephone: (202) 566–3100.

Alice Miller,

Chief Operating Officer, U.S. Election Assistance Commission.

[FR Doc. E9–20567 Filed 8–21–09; 4:15 pm]

BILLING CODE 6820–KF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13433–000]

D. Stephen Sorensen; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Competing Applications

August 14, 2009.

On April 16, 2009, D. Stephen Sorenson filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Piute Dam Hydro Project located on the Sevier River in Piute County, Utah. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following:

(1) An existing 1,403-foot-long, 80-foot-high earthen Dam; (2) an existing reservoir having a surface area of 3,360 acres and a storage capacity of 74,000 acre-feet and normal water surface elevation of 5,990 feet mean sea level; (3) a proposed penstock 4 feet wide and 560 feet long; (4) a proposed powerhouse containing a 1,543-kilowatt turbine generator; (5) a tailrace; (6) a proposed 2,300-foot-long overhead transmission line; and (7) appurtenant facilities. The proposed Piute Dam Hydro Project would have an average annual generation of 4.15 gigawatt-hours.

Applicant Contact: Robert W. Worley, Sunrise Engineering, Inc., 25 East 500 North, Filmore, UT 64631, phone: (435) 743–6151.

FERC Contact: Joseph P. Hassell, 202–502–8079.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13433) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–20366 Filed 8–24–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2808–011; 2809–026; 3562–020; 4202–020; 11132–025; 11472–057; 11482–027; 11566–017]

Ridgewood Maine Hydro Partners, L.P.; KEI (Maine) Power Management (I) LLC; KEI (Maine) Power Management (II) LLC; KEI (Maine) Power Management (III) LLC; KEI (Maine) Power Management (IV) LLC; Notice of Application for Transfer of Licenses, and Soliciting Comments and Motions To Intervene

August 18, 2009.

On July 30, 2009, Ridgewood Maine Hydro Partners, L.P. (Transferor) and KEI (Maine) Power Management (I) LLC, KEI (Maine) Power Management (II) LLC, KEI (Maine) Power Management (III) LLC, and KEI (Maine) Power Management (IV) LLC, all wholly owned subsidiaries of KEI (USA) Power Management Inc. (Transferees) filed an application for transfer of licenses for the:

Lower Barker Mill Project located on the Little Androscoggin River in Androscoggin County; American Tissue Dam Project located on the Cobbosseecontee Stream, in Kennebec County; Upper Barker Mill Project located on the Little Androscoggin River in Androscoggin County; Lowell Tannery Project located on the Passadumkeag River, Penobscot County; Eustis Project located on the North Branch of the Dead River, Franklin County; Burnham Project located on the Sebasticook River, Somerset and Waldo Counties; Marcal Project located on the Little Androscoggin River in Androscoggin County; and Damariscotta Project located on the Damariscotta River, Lincoln County. These projects are located in the state of Maine.

Applicants seek Commission approval to transfer the licenses for the Lower Barker Mill, American Tissue Dam, Upper Barker Mill, Lowell Tannery, Eustis, Burnham, Marcal, and Damariscotta Projects from the Transferor to the Transferees.

Applicant Contact: Transferor: Ms. Maria Haggerty, Ridgewood Maine Hydro Partners, L.P., c/o Ridgewood Power Corporation, 977 Linwood Avenue, Ridgewood, NJ 07450, phone (201) 447–9000. Transferee: KEI (USA) Power Management, Inc., Mr. Guy Paquette, Kruger Energy, Inc., 3285 Bedford Road, Montreal, Quebec H3S 1 5, phone (514) 343–3247.

FERC Contact: Patricia W. Gillis, (202) 502–8735.

Deadline for filing comments and motions to intervene: 15 days from the issuance of this notice. Comments and motions to intervene may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii)(2008) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project can be viewed or printed on the eLibrary link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket numbers (Project Nos. 2808–011, 2809–026, 3562–020, 4202–020, 11132–025, 11472–057, 11482–027, and 11566–017) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–20368 Filed 8–24–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–454–000]

BCR Holdings, Inc.; Notice of Application

August 18, 2009.

Take notice that on August 13, 2009, BCR Holdings, Inc. (BCR), 820 Gessner, Suite 1680, Houston, TX 77024, filed a petition in Docket No. CP09–454–000 for Exemption of Temporary Acts and Operations from Certificate Requirements, pursuant to Rule 207(a)(5) of the Commission's Rules of Practice and Procedure, and section 7(c)(1)(B) of the Natural Gas Act, seeking approval of an exemption from certificate requirements to perform temporary activities in order to drill two test wells and perform other activities to assess the feasibility of developing an underground natural gas storage facility in Lafourche Parish, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–3676 or TYY, (202) 502–8659.

Any questions regarding this application should be directed to Thomas W. Cook, 805 E. Union St., Broken Arrow, Oklahoma 74011, and phone: (918) 524–8503 or facsimile: (966) 628–7999.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

Persons who wish to comment only on the environmental review of this project, or in support of or in opposition to this project, should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the applicant. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Comment Date: 5 p.m. Eastern Time on September 8, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–20371 Filed 8–24–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2157–188]

Public Utility District No. 1 of Snohomish County; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions

August 18, 2009.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* P–2157–188.

c. *Date Filed:* June 1, 2009.

d. *Applicant:* Public Utility District No. 1 of Snohomish County.

e. *Name of Project:* Henry M Jackson Hydroelectric Project.

f. *Location:* The existing project is located on the Sultan River in Snohomish County, Washington, about 20 miles east of Everett, Washington. The project penstock underlies 10.9 acres of Mount Baker-Snoqualmie National Forest.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Public Utility District No. 1 of Snohomish County (District), Steven J. Klein, General Manager, 2320 California Street, P.O. Box 1107, Everett, WA 98206–1107.

i. *FERC Contact:* David Turner (202) 502–6091 or via e-mail at *david.turner@ferc.gov*.

j. The deadline for filing motions to intervene and protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions is October 19, 2009; reply comments are due December 1, 2009.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents

with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene, protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted for filing and is ready for environmental analysis.

l. The existing project consists of the following: (1) Spada Lake, with a surface area of 1,802 acres at a normal water surface elevation of 1,445 feet msl; (2) Culmback dam, a 640-foot-long, 262-foot-high earth and rockfill dam with a crest elevation of 1,470 feet msl located at River Mile (RM) 16.5 on the Sultan River; (3) a concrete morning glory spillway with a crest elevation of 1,450 feet msl located approximately 250 feet from the right bank; (4) a system of conduits and valves under the dam which provide the minimum flow downstream of Culmback dam; (5) a 110-foot-tall concrete intake structure located approximately 250 feet upstream of the dam with three 20-foot movable panels to allow withdrawal from different depths; (6) a penstock consisting of a 3.8-mile-long, 14-foot-diameter unlined tunnel leading to a 3.7-mile-long, 10-foot-diameter underground pipeline; (7) a two-story reinforced-concrete powerhouse located at RM 4.3; (8) four generating units with a total installed capacity of 111.8 MW; Units 1 and 2 are 47.5 MW Pelton turbines which discharge water directly into a 40-foot-long discharge canal to the Sultan River; Units 3 and 4 are 8.4 MW Francis turbines which discharge water through the Lake Chaplain water supply pipeline; (9) the approximately 3.5–mile-long, 72-inch-diameter Lake Chaplain water supply pipeline, which routes water from the Francis turbines to the Portal 2 structure at Lake Chaplain; (10) the Portal 2 structure, which diverts flows from the Lake Chaplain pipeline to Lake Chaplain (a 450-acre reservoir which serves as the City of Everett's water supply) or to the diversion dam tunnel and pipeline; (11) a 1.5-mile-long, concrete-lined tunnel and a 2,000-foot-long, 72-inch-diameter concrete pipeline connecting Lake Chaplain and the Sultan River immediately upstream of the diversion dam; (12) a 120-foot-long, 20-foot-high, concrete gravity diversion dam which was originally constructed to divert water from the Sultan River to Lake Chaplain; and (13) other appurtenant equipment. Project operations are guided by reservoir rule curves which are designed to minimize spill at Spada Lake while providing minimum flow releases to the Sultan River downstream of the diversion dam. The District proposes the following changes to the project: (1) Modifications to the project boundary that include additions to and exclusions to the existing project boundary; (2) a new Operations Plan based on revised Spada Lake rule curves; (3) several aquatic habitat enhancement measures; (4) measures to protect and enhance wildlife habitat; (5) measures to enhance recreational opportunities; and (6) measures to protect historic properties.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, 202–502–8659. A copy is also available for inspection and reproduction at the address in item h above.

Register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) Bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''PRELIMINARY TERMS AND CONDITIONS,'' or ''PRELIMINARY FISHWAY PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

o. *Procedural Schedule:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Filing of Interventions, Recommendations, Preliminary Terms and Conditions, and Fishway Prescriptions	October 19, 2009.
Reply Comments due	December 1, 2009.
Issue Draft EA	April 13, 2010.
Comments on Draft EA Due	May 13, 2010.
Filing of Modified Mandatory Terms and Conditions	July 12, 2010.
Issue Final EA	October 11, 2010.

p. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

q. A license applicant must file no later than 60 days following the date of issuance of the notice of acceptance and ready for environmental analysis provided for in 5.22: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–20367 Filed 8–24–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

August 18, 2009.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG09–85–000.

Applicants: Ashtabula Wind II, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Ashtabula Wind II, LLC.

Filed Date: 08/17/2009.

Accession Number: 20090817–5141.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 08, 2009.

Docket Numbers: EG09–86–000.

Applicants: Elk City Wind, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Elk City Wind, LLC.

Filed Date: 08/17/2009.

Accession Number: 20090817–5181.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 08, 2009.

Docket Numbers: EG09–87–000.

Applicants: FPL Energy Stateline II, Inc.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of FPL Energy Stateline II, Inc.

Filed Date: 08/17/2009.

Accession Number: 20090817–5182.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 08, 2009.

Docket Numbers: EG09–88–000.

Applicants: FPL Energy Illinois Wind, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of FPL Energy Illinois Wind, LLC.

Filed Date: 08/17/2009.

Accession Number: 20090817–5183.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 08, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER09–659–002.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits revisions to the Agreement between Southwest Power Pool, Inc and Entergy Services, Inc.

Filed Date: 08/17/2009.

Accession Number: 20090818–0035.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 08, 2009.

Docket Numbers: ER09–1064–004.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corp. reports that clean tariff sheets composing Attachment A to that filing inadvertently failed to incorporate all the changes reflected in the redline tariff sheets etc.

Filed Date: 08/11/2009.

Accession Number: 20090811–0050.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 01, 2009.

Docket Numbers: ER09–1252–001.

Applicants: Midwest Independent Transmission System, MidAmerican Energy Company.

Description: Midwest Independent Transmission System Operator, Inc *et al.* submits the instant Compliance Filing.

Filed Date: 08/17/2009.

Accession Number: 20090818–0036.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 08, 2009.

Docket Numbers: ER09–1253–001.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits proposed revisions to Attachment P of the Midwest ISO's Open Access Transmission, Energy and Operating Reserve Markets Tariffs, FERC Electric Tariff, Fourth Revised Volume 1.

Filed Date: 08/17/2009.

Accession Number: 20090818–0034.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 08, 2009.

Docket Numbers: ER09–1590–000.

Applicants: Xcel Energy Services Inc.

Description: Southwestern Public Service Company *et al.* submits the proposed cancellation of the New Century Operating Companies Open Access Transmission Tariff, Second Revised Volume 1.

Filed Date: 08/17/2009.

Accession Number: 20090818–0001.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 08, 2009.

Docket Numbers: ER09–1591–000.

Applicants: Tampa Electric Company.

Description: Tampa Electric Company submits Service Schedule C for inclusion in the Contract for Interchange Service with Seminole Electric Coop, Inc.

Filed Date: 08/17/2009.

Accession Number: 20090817–4003.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 08, 2009.

Docket Numbers: ER09–1592–000.

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric Co submits a Wholesale Work Performance Agreement with Shelter Cove Resort Improvement District 1.

Filed Date: 08/17/2009.

Accession Number: 20090818–0008.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 08, 2009.

Docket Numbers: ER09–1593–000.

Applicants: Florida Power & Light Company.

Description: Florida Power & Light Co submits a new Service Agreement 269, Service Agreement for Long-Term Firm Point-to-Point Transmission Service with Georgia Transmission Corporation.

Filed Date: 08/17/2009.

Accession Number: 20090818–0007.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 08, 2009.

Docket Numbers: ER09–1594–000.

Applicants: Tampa Electric Company.

Description: Tampa Electric Co submits Service Schedule C for inclusion in the Agreement for Interchange Service with City of Lakeland, Florida.

Filed Date: 08/17/2009.

Accession Number: 20090818–0005.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 08, 2009.

Docket Numbers: ER09–1595–000.

Applicants: Tampa Electric Company.

Description: Tampa Electric Co submits Service Schedule C for inclusion in the Contract for Interchange Service with Florida Power Corp.

Filed Date: 08/17/2009.

Accession Number: 20090818–0004.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 08, 2009.

Docket Numbers: ER09–1596–000.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc submits proposed revisions to its Market Administration and Control Area Services Tariff.

Filed Date: 08/17/2009.

Accession Number: 20090818–0003.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 08, 2009.

Docket Numbers: ER09–1597–000.
Applicants: Tampa Electric Company.
Description: Tampa Electric Co submits Service Schedule C for inclusion in the Contract for Interchange Service with Reedy Creek Improvement District.
Filed Date: 08/17/2009.
Accession Number: 20090818–0002.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 08, 2009.

Docket Numbers: ER09–1598–000.
Applicants: Nevada Power Company.
Description: Nevada Power Company submits FERC Rate Schedule 52—Supplemental Power Service Agreement with City of Boulder City, NV *et al.*
Filed Date: 08/17/2009.
Accession Number: 20090818–0038.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 08, 2009.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA07–36–005; OA08–46–004.
Applicants: South Carolina Electric & Gas Company.
Description: Attachment K Compliance Filing of South Carolina Electric & Gas Company, *et al.*
Filed Date: 08/17/2009.
Accession Number: 20090817–5192.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 08, 2009.

Docket Numbers: OA08–20–003.
Applicants: Tampa Electric Company.
Description: Compliance Filing of Tampa Electric Company.
Filed Date: 08/17/2009.
Accession Number: 20090817–5187.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 08, 2009.

Docket Numbers: OA08–22–003.
Applicants: Florida Power Corporation.
Description: Compliance Filing of Florida Power Corporation.
Filed Date: 08/17/2009.
Accession Number: 20090817–5188.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 08, 2009.

Docket Numbers: OA08–29–002.
Applicants: Florida Power & Light Company.
Description: Florida Power & Light Company Order No. 890 Attachment K Compliance Filing.
Filed Date: 08/17/2009.
Accession Number: 20090817–5190.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 08, 2009.

Docket Numbers: OA08–36–004.
Applicants: Cleco Power LLC.
Description: Attachment K Compliance Filing of Cleco Power LLC.
Filed Date: 08/17/2009.
Accession Number: 20090817–5191.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 08, 2009.

Docket Numbers: OA08–37–004.
Applicants: Southern Company Services, Inc.
Description: Compliance Filing of Southern Company Services, Inc. under OA08–37.
Filed Date: 08/17/2009.
Accession Number: 20090817–5204.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 08, 2009.

Docket Numbers: OA08–50–005; OA08–51–004.
Applicants: Duke Energy Carolinas, LLC, Progress Energy Carolinas, Inc.
Description: Compliance Filing of Duke Energy Carolinas, LLC, *et al.*
Filed Date: 08/17/2009.
Accession Number: 20090817–5185.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 08, 2009.

Docket Numbers: OA08–59–007.
Applicants: Entergy Services, Inc.
Description: Entergy Operating Companies submits compliance filing to amend Attachment K to Entergy's Open Access Transmission Tariff.
Filed Date: 08/17/2009.
Accession Number: 20090818–0037.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 08, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,
Deputy Secretary.
[FR Doc. E9–20354 Filed 8–24–09; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

August 17, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER91–569–046.
Applicants: Entergy Services, Inc.
Description: Entergy Arkansas, Inc *et al.* submits a non material change in status pursuant to the requirements of Order 652.
Filed Date: 08/14/2009.
Accession Number: 20090817–0075.
Comment Date: 5 p.m. Eastern Time on Friday, September 04, 2009.

Docket Numbers: ER09–1391–001.
Applicants: MidAmerican Energy Company.
Description: MidAmerican Energy Company submits Notice of Cancellation.
Filed Date: 08/14/2009.
Accession Number: 20090817–0077.
Comment Date: 5 p.m. Eastern Time on Friday, September 04, 2009.

Docket Numbers: ER09–1429–001.
Applicants: Black Hills Wyoming, LLC.
Description: Black Hills Wyoming, LLC submits for acceptance Original

Sheet 1 to FERC Electric Tariff, Original Volume 1.

Filed Date: 08/14/2009.

Accession Number: 20090817–0076.

Comment Date: 5 p.m. Eastern Time on Friday, September 04, 2009.

Docket Numbers: ER09–1555–000.

Applicants: Wisconsin Power and Light Company.

Description: Wisconsin Power and Light Company submits Changes in Depreciation Rates for Wholesale Production Service.

Filed Date: 08/07/2009.

Accession Number: 20090807–0095.

Comment Date: 5 p.m. Eastern Time on Friday, August 28, 2009.

Docket Numbers: ER09–1556–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits Original Service Agreement 2074 to its FERC Electric Tariff, Fourth Revised Volume 1.

Filed Date: 08/07/2009.

Accession Number: 20090807–0096.

Comment Date: 5 p.m. Eastern Time on Friday, August 28, 2009.

Docket Numbers: ER09–1557–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits Original Service Agreement 2075 to its FERC Electric Tariff, Fourth Revised Volume 1.

Filed Date: 08/07/2009.

Accession Number: 20090807–0097.

Comment Date: 5 p.m. Eastern Time on Friday, August 28, 2009.

Docket Numbers: ER09–1560–000.

Applicants: Entergy Services, Inc.

Description: Entergy Services, Inc submits a Notice of Termination of Rate Schedule FERC No. 9 *etc.*

Filed Date: 08/07/2009.

Accession Number: 20090807–0114.

Comment Date: 5 p.m. Eastern Time on Friday, August 28, 2009.

Docket Numbers: ER09–1585–000.

Applicants: PacifiCorp.

Description: PacifiCorp submits Notice of Cancellation for Service Agreement No 470 to its Seventh Revised Volume No 11 OATT.

Filed Date: 08/14/2009.

Accession Number: 20090814–0094.

Comment Date: 5 p.m. Eastern Time on Friday, September 04, 2009.

Docket Numbers: ER09–1587–000.

Applicants: ISO New England Inc.

Description: ISO New England submits its Capital Projects Reports and schedule of the unamortized costs of the ISO's funded capital expenditures for the quarter ending 6/30/09.

Filed Date: 08/14/2009.

Accession Number: 20090817–0074.

Comment Date: 5 p.m. Eastern Time on Friday, September 04, 2009.

Docket Numbers: ER09–1588–000.

Applicants: ISO New England Inc.

Description: ISO New England Inc submits three executed, but non-conforming, four-party Standard Larger Generator Interconnection Agreements.

Filed Date: 08/14/2009.

Accession Number: 20090817–0078.

Comment Date: 5 p.m. Eastern Time on Friday, September 04, 2009.

Docket Numbers: ER09–1589–000.

Applicants: FirstEnergy Service Company.

Description: FirstEnergy Service Company requests that the Commission approve the termination of ATSI's status as a transmission operator *etc.*

Filed Date: 08/17/2009.

Accession Number: 20090817–0031.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 08, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–20355 Filed 8–24–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

August 18, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP09–748–002.

Applicants: Quest Pipelines (KPC).

Description: Request for Extension of Time to Implement NAESB Version 1.8 of Quest Pipelines (KPC).

Filed Date: 08/04/2009.

Accession Number: 20090804–5118.

Comment Date: 5 p.m. Eastern Time on Friday, August 21, 2009.

Docket Numbers: RP96–200–230.

Applicants: CenterPoint Energy Gas Transmission Company.

Description: CenterPoint Energy Gas Transmission Company submits an amended negotiated rate agreement with EOG Resources, Inc.

Filed Date: 08/11/2009.

Accession Number: 20090812–0054.

Comment Date: 5 p.m. Eastern Time on Monday, August 24, 2009.

Docket Numbers: RP09–826–001.

Applicants: Central New York Oil and Gas Co., LLC.

Description: Central New York Oil and Gas Company, LLC submits Second Revised Sheet No 103A to its FERC Gas Tariff, Original Volume No 1.

Filed Date: 08/13/2009.

Accession Number: 20090814–0266.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 25, 2009.

Docket Numbers: RP06–200–055.

Applicants: Rockies Express Pipeline LLC.

Description: Rockies Express Pipeline LLC submits Sixth Revised Sheet 8B *et al.* FERC Gas Tariff, Second Revised

Volume 1, to be effective 8/15/09.

Filed Date: 08/14/2009.

Accession Number: 20090814–0261.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 26, 2009.

Docket Numbers: RP09–672–001.

Applicants: Black Marlin Pipeline Company.

Description: Black Marlin Pipeline Company submits Sub. First Revised Sheet 201A.01 to its FERC Gas Tariff Original Volume 1, to be effective 8/1/09.

Filed Date: 08/14/2009.

Accession Number: 20090817–0061.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 26, 2009.

Docket Numbers: RP09–673–001.

Applicants: Discovery Gas Transmission LLC.

Description: Discovery Gas Transmission submits Sub. Tenth Revised Sheet 196 to its FERC Gas Tariff, Original Volume 1, to be effective 8/1/09.

Filed Date: 08/14/2009.

Accession Number: 20090817–0062.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 26, 2009.

Docket Numbers: RP09–750–001.

Applicants: MarkWest New Mexico, L.L.C.

Description: MarkWest New Mexico, LLC submits Sub. First Revised Sheet 155 of its FERC Gas Tariff Second Revised Volume 1, to be effective 8/1/09.

Filed Date: 08/14/2009.

Accession Number: 20090814–0263.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 26, 2009.

Docket Numbers: RP09–772–001.

Applicants: MoGas Pipeline LLC.

Description: MoGas Pipeline LLC submits Sub. First Revised Sheet 84 of its FERC Gas Tariff. First Revised Volume 1.

Filed Date: 08/14/2009.

Accession Number: 20090814–0262.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 26, 2009.

Docket Numbers: RP96–200–235.

Applicants: CenterPoint Energy Gas Transmission Co.

Description: CenterPoint Energy Gas Transmission Company submits amended negotiated rate agreement between CEGT and Marabou Midstream Services, LP.

Filed Date: 08/14/2009.

Accession Number: 20090814–0264.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 26, 2009.

Docket Numbers: RP09–665–002.

Applicants: Mojave Pipeline Company.

Description: Mojave Pipeline Company submits Substitute Tenth Revised Sheet 202 *et al.* to FERC Gas Tariff, Second Revised Volume 1, to be effective 8/1/09.

Filed Date: 08/17/2009.

Accession Number: 20090818–0028.

Comment Date: 5 p.m. Eastern Time on Monday, August 31, 2009.

Docket Numbers: RP09–667–002.

Applicants: Young Gas Storage Company, Ltd.

Description: Young Gas Storage Company submits Substitute Fourteenth Revised Sheet 49 *et al.* to FERC Gas Tariff, Original Volume 1, to be effective 8/1/09.

Filed Date: 08/17/2009.

Accession Number: 20090818–0031.

Comment Date: 5 p.m. Eastern Time on Monday, August 31, 2009.

Docket Numbers: RP09–668–002.

Applicants: Wyoming Interstate Company, Ltd.

Description: Wyoming Interstate Company submits Substitute Fifth Revised Sheet 37C.01 *et al.* to FERC Gas Tariff, Second Revised Volume 2, to be effective 8/1/09.

Filed Date: 08/17/2009.

Accession Number: 20090818–0030.

Comment Date: 5 p.m. Eastern Time on Monday, August 31, 2009.

Docket Numbers: RP09–669–002.

Applicants: Colorado Interstate Gas Company.

Description: Colorado Interstate Gas Company submits Substitute Eighth Revised Sheet 231 *et al.* to FERC Gas Tariff, First Revised Volume 1, to be effective 8/1/09.

Filed Date: 08/17/2009.

Accession Number: 20090818–0029.

Comment Date: 5 p.m. Eastern Time on Monday, August 31, 2009.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before 5 p.m. Eastern time on the specified comment date. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–20358 Filed 8–24–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 2

August 17, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP09–611–001.

Applicants: Carolina Gas Transmission Corporation.

Description: Carolina Gas Transmission Corporation submits revised tariff sheet pursuant to Order No 587.

Filed Date: 08/12/2009.

Accession Number: 20090812–0071.

Comment Date: 5 p.m. Eastern Time on Monday, August 24, 2009.

Docket Numbers: RP09–762–001.

Applicants: El Paso Natural Gas Company.

Description: Fuel Exemption Compliance Filing of El Paso Natural Gas Company.

Filed Date: 08/12/2009.

Accession Number: 20090812–5090.

Comment Date: 5 p.m. Eastern Time on Monday, August 24, 2009.

Docket Numbers: RP09–863–002.

Applicants: Columbia Gas Transmission, LLC.

Description: Columbia Gas Transmission, LLC resubmits several non-conforming and negotiated service agreements including the executed credit annexes under RP09–863.

Filed Date: 08/12/2009.

Accession Number: 20090813–0030.

Comment Date: 5 p.m. Eastern Time on Monday, August 24, 2009.

Docket Numbers: RP96–200–229.

Applicants: CenterPoint Energy Gas Transmission Comp.

Description: CenterPoint Energy Gas Transmission Company submits

amended negotiated rate agreements with Chesapeake Energy Marketing, Inc.

Filed Date: 08/11/2009.

Accession Number: 20090812–0056.

Comment Date: 5 p.m. Eastern Time on Monday, August 24, 2009.

Docket Numbers: RP96–200–231.

Applicants: CenterPoint Energy Gas Transmission Comp.

Description: CenterPoint Energy Gas Transmission Company submits an amended negotiated rate agreement with Macquarie Cook Energy, LLC.

Filed Date: 08/11/2009.

Accession Number: 20090812–0053.

Comment Date: 5 p.m. Eastern Time on Monday, August 24, 2009.

Docket Numbers: RP96–200–232.

Applicants: CenterPoint Energy Gas Transmission Company.

Description: CenterPoint Energy Gas Transmission Company submits an amended negotiated rate agreement with Shell Energy North America (U.S.), LP.

Filed Date: 08/11/2009.

Accession Number: 20090812–0052.

Comment Date: 5 p.m. Eastern Time on Monday, August 24, 2009.

Docket Numbers: RP96–200–233.

Applicants: CenterPoint Energy Gas Transmission Company.

Description: CenterPoint Energy Gas Transmission Company submits amended negotiated rate agreements with Petrohawk Energy Corp.

Filed Date: 08/11/2009.

Accession Number: 20090812–0051.

Comment Date: 5 p.m. Eastern Time on Monday, August 24, 2009.

Docket Numbers: RP96–200–234.

Applicants: CenterPoint Energy Gas Transmission Company.

Description: CenterPoint Energy Gas Transmission Company submits an amended negotiated rate agreement between CEGT and Connect Energy Services. LLC.

Filed Date: 08/12/2009.

Accession Number: 20090813–0225.

Comment Date: 5 p.m. Eastern Time on Monday, August 24, 2009.

Docket Numbers: RP96–200–235.

Applicants: CenterPoint Energy Gas Transmission Co.

Description: CenterPoint Energy Gas Transmission Company submits amended negotiated rate agreement between CEGT and Marabou Midstream Services, LP.

Filed Date: 08/14/2009.

Accession Number: 20090814–0264.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 26, 2009.

Docket Numbers: RP06–200–055.

Applicants: Rockies Express Pipeline LLC.

Description: Rockies Express Pipeline LLC submits Sixth Revised Sheet 8B et al FERC Gas Tariff, Second Revised Volume 1, to be effective 8/15/09.

Filed Date: 08/14/2009.

Accession Number: 20090814–0261.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 26, 2009.

Docket Numbers: RP09–750–001.

Applicants: MarkWest New Mexico, LLC.

Description: MarkWest New Mexico, LLC submits Sub. First Revised Sheet 155 of its FERC Gas Tariff Second Revised Volume 1, effective 8/1/09.

Filed Date: 08/14/2009.

Accession Number: 20090814–0263.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 26, 2009.

Docket Numbers: RP09–772–001.

Applicants: MoGas Pipeline LLC.

Description: MoGas Pipeline LLC submits Sub. First Revised Sheet 84 of its FERC Gas Tariff. First Revised Volume 1.

Filed Date: 08/14/2009.

Accession Number: 20090814–0262.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 26, 2009.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before 5 p.m. Eastern time on the specified comment date. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–20360 Filed 8–24–09; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL ENERGY REGULATORY COMMISSION

Combined Notice of Filings No. 1

August 17, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP09–883–000.

Applicants: Tuscarora Gas Transmission Company.

Description: Tuscarora Gas Transmission Co submits First Revised Sheet 156 to FERC Gas Tariff, First Revised Volume 1, to be effective 9/10/09.

Filed Date: 08/11/2009.

Accession Number: 20090811–0065.

Comment Date: 5 p.m. Eastern Time on Monday, August 24, 2009.

Docket Numbers: RP09–890–000.

Applicants: Rockies Express Pipeline LLC.

Description: Rockies Express Pipeline LLC submits First Revised Sheet No. 42 et al. to FERC Gas Tariff, Second Revised Volume No. 1, to be effective 9/12/09.

Filed Date: 08/12/2009.

Accession Number: 20090812–0090.

Comment Date: 5 p.m. Eastern Time on Monday, August 24, 2009.

Docket Numbers: RP09–891–000.

Applicants: Northern Natural Gas Company.

Description: Northern Natural Gas Company submits 13th Revised Sheet 263H et al. to its FERC Gas Tariff, Fifth Revised Volume 1, to be effective 11/1/09.

Filed Date: 08/12/2009.

Accession Number: 20090812–0072.

Comment Date: 5 p.m. Eastern Time on Monday, August 24, 2009.

Docket Numbers: RP09–892–000.

Applicants: Midwestern Gas Transmission Company.

Description: Midwestern Gas Transmission Co submits Fourth Revised Sheet No. 273A et al. to FERC Gas Tariff, Third Revised Volume No. 1, to be effective 8/12/09.

Filed Date: 08/12/2009.

Accession Number: 20090812–0101.

Comment Date: 5:00 pm Eastern Time on Monday, August 24, 2009.

Docket Numbers: RP09–893–000.

Applicants: MIGC LLC.

Description: MIGC LLC submits its Second Revised Sheet 4 to its FERC Gas Tariff, Second Revised Volume 1, to be effective 10/1/09.

Filed Date: 08/14/2009.

Accession Number: 20090814–0073.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 26, 2009.

Docket Numbers: RP09–894–000.

Applicants: Hardy Storage Company, LLC.

Description: Hardy Storage Company submits Third Revised Sheet 10 to its FERC Gas Tariff, Original Volume 1, to be effective 10/1/09.

Filed Date: 08/14/2009.

Accession Number: 20090814–0260.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 26, 2009.

Docket Numbers: RP09–895–000.

Applicants: Central Kentucky Transmission Company

Description: Central Kentucky Transmission Company submits Eighth Revised Sheet 6 to its FERC Gas Tariff, Original Volume 1, to be effective 10/1/09.

Filed Date: 08/14/2009.

Accession Number: 20090814–0265.

Comment Date: 5 pm Eastern Time on Wednesday, August 26, 2009.

Docket Numbers: RP09–896–000.

Applicants: Crossroads Pipeline Company.

Description: Crossroads Pipeline Company submits Eleventh Revised Sheet 6 to its FERC Gas Tariff, First Revised Volume 1, to be effective 10/1/09.

Filed Date: 08/14/2009.

Accession Number: 20090814–0259.

Comment Date: 5 pm Eastern Time on Wednesday, August 26, 2009.

Docket Numbers: RP09–897–000.

Applicants: Columbia Gulf Transmission Company.

Description: Columbia Gulf Transmission Company submits Fiftieth Revised Sheet 18 et al. to FERC Gas Tariff, Second Revised Volume 1, to be effective 10/1/09.

Filed Date: 08/14/2009.

Accession Number: 20090814–0258.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 26, 2009.

Docket Numbers: RP09–898–000.

Applicants: Columbia Gas Transmission, LLC.

Description: Columbia Gas Transmission, LLC submits Sixth Revised Sheet 25 et al. to its FERC Gas Tariff, Third Revised Volume 1, to be effective 10/1/09.

Filed Date: 08/14/2009.

Accession Number: 20090814–0257.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 26, 2009.

Docket Numbers: RP09–899–000.

Applicants: Kinder Morgan Interstate Gas Transmission LLC.

Description: Kinder Morgan Interstate Gas Transmission LLC submits part of its FERC Gas Tariff, Fourth Revised Volume 1–A, Fifteenth Revised Sheet 4D, to be effective 10/1/09.

Filed Date: 08/14/2009.

Accession Number: 20090814–0256.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 26, 2009.

Docket Numbers: RP09–900–000.

Applicants: TransColorado Gas Transmission Company LLC.

Description: TransColorado Gas Transmission Company LLC submits FERC Gas Tariff, Second Revised Volume 1, Fifth Revised Sheet 20 and Third revised Sheet 21A effective 10/1/09.

Filed Date: 08/14/2009.

Accession Number: 20090814–0255.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 26, 2009.

Docket Numbers: RP09–901–000.

Applicants: Rockies Express Pipeline LLC.

Description: Rockies Express Pipeline LLC submits Second Revised Sheet 7B et al. of FERC Gas Tariff, Second Revised Volume 1, to be effective 10/1/09.

Filed Date: 08/14/2009.

Accession Number: 20090814–0254.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 26, 2009.

Docket Numbers: RP09–902–000.

Applicants: North Baja Pipeline, LLC.

Description: North Baja Pipeline, LLC submits Second Revised Sheet 181 to be part of its FERC Gas Tariff, Original Volume 1, to reflect the Commission's policy on refunds as they relate to short-term capacity release transactions.

Filed Date: 08/14/2009

Accession Number: 20090814–0253

Comment Date: 5 p.m. Eastern Time on Wednesday, August 26, 2009

Docket Numbers: RP09–903–000.

Applicants: Gas Transmission Northwest Corporation.

Description: Gas Transmission Northwest Corporation submits First Revised Sheet 196 to be part of its FERC Gas Tariff, Third Revised Volume 1–A, to be effective 9/13/09.

Filed Date: 08/14/2009.

Accession Number: 20090814–0267.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 26, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–20359 Filed 8–24–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

August 14, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER01–1822–006.

Applicants: Indigo Generation LLC, Larkspur Energy LLC, Wildflower Energy LP.

Description: Indigo Generation LLC, et al. Notification of Non-Material Change in Status.

Filed Date: 08/12/2009.

Accession Number: 20090812–5083.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 02, 2009.

Docket Numbers: ER08–370–009.

Applicants: Midwest Independent System Transmission Operator, Inc.

Description: Missouri River Energy Services et al. submits Attachment O transmission rate formula tariff sheet under the Midwest Independent Transmission System Operator, Inc Open Access Transmission and Energy Markets Tariff.

Filed Date: 08/12/2009.

Accession Number: 20090813–0232.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 02, 2009.

Docket Numbers: ER09–1119–001.

Applicants: Pacific Gas and Electric Company.

Description: Compliance Refund Report of Pacific Gas and Electric Company.

Filed Date: 08/12/2009.

Accession Number: 20090812–5077.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 02, 2009.

Docket Numbers: ER09–1573–000.

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric Company submits an executed amendment to the Grizzly Development and Mokelumne Settlement Agreement with the City of Santa Clara, California.

Filed Date: 08/12/2009.

Accession Number: 20090813–0028.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 02, 2009.

Docket Numbers: ER09–1574–000.

Applicants: MidAmerican Energy Company.

Description: MidAmerican Energy Company submits First Revised Rate Schedule 42 with ITC Midwest LLC dated effective 9/1/09 et al.

Filed Date: 08/12/2009.

Accession Number: 20090813–0026.

Comment Date: 5 p.m. Eastern Time on Friday, August 21, 2009.

Docket Numbers: ER09–1575–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits an Amended and Restated Facilities Construction Agreement with Benton County Wind Farm, LLC, to be effective 8/13/09.

Filed Date: 08/12/2009.

Accession Number: 20090813–0100.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 02, 2009.

Docket Numbers: ER09–1576–000.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator Inc submits filing to request a limited waiver, to the extent the Commission deems a waiver necessary, from the application of Attachment C of its Market Administration etc.

Filed Date: 08/12/2009.

Accession Number: 20090813–0227.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 02, 2009.

Docket Numbers: ER09–1577–000.

Applicants: California Independent System Operator Corporation.

Description: The California Independent System Operator Corp submits Amendment No. 5 to the Interconnected Control Area Operating Agreement with Sacramento Municipal Utility District.

Filed Date: 08/12/2009.

Accession Number: 20090813–0223.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 02, 2009.

Docket Numbers: ER09–1578–000.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation submits for Commission filing and acceptance Amendment 1 etc.

Filed Date: 08/12/2009.

Accession Number: 20090813–0226.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 02, 2009.

Docket Numbers: ER09–1579–000.

Applicants: Central Maine Power Company.

Description: Central Maine Power Company submits the Engineering and Procurement Agreement dated 7/14/09 with Fox Islands Electric Cooperative, Inc designated as Original Service Agreement CMP–EP–3.

Filed Date: 08/13/2009.

Accession Number: 20090813–0156.

Comment Date: 5 p.m. Eastern Time on Thursday, September 03, 2009.

Docket Numbers: ER09–1581–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits amended and restated generator interconnection agreement among Northern States Power Company, a Minnesota Corporation, *et al.*

Filed Date: 08/13/2009.

Accession Number: 20090814–0074.

Comment Date: 5 p.m. Eastern Time on Thursday, September 03, 2009.

Docket Numbers: ER09–1582–000.

Applicants: Consolidated Edison Company of New York.

Description: Consolidated Edison Company of New York, Inc submits an amendment to Con Edison's Delivery Service Rate Schedule 96.

Filed Date: 08/14/2009.

Accession Number: 20090814–0076.

Comment Date: 5 p.m. Eastern Time on Friday, September 04, 2009.

Docket Numbers: ER09–1583–000.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits revised sheet of the Amended and Restated Operating Agreement of PJM Interconnection, LLC.

Filed Date: 08/14/2009.

Accession Number: 20090814–0077.

Comment Date: 5 p.m. Eastern Time on Friday, September 04, 2009.

Docket Numbers: ER09–1584–000.

Applicants: Tampa Electric Company.

Description: Tampa Electric Company submits amendment of transmission service agreement with Auburndale Power Partners, Limited Partnership.

Filed Date: 08/14/2009.

Accession Number: 20090814–0075.

Comment Date: 5 p.m. Eastern Time on Friday, September 04, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and § 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC There is an eSubscription link on the Web site that

enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–20357 Filed 8–24–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP09–879–000]

SourceGas Distribution LLC and SourceGas Energy Services Company, Complainants, v. Kinder Morgan Interstate Gas Transmission LLC, Respondent; Notice of Complaint

August 18, 2009.

Take notice that on August 7, 2009, SourceGas Distribution LLC and SourceGas Energy Services Company (complainants) filed a formal complaint against Kinder Morgan Interstate Gas Transmission LLC (KMIGT), pursuant to sections 4 and 5 of the Natural Gas Act, 15 USC 717c(b) and 717d(a) (2000) and pursuant to 18 CFR 385.206 and 395.212 (2009). The complainants are alleging that KIMIGT's adjustment practices being applied in connection with resolving longstanding volumetric processing issues relating to complainants are unjust, unreasonable and/or unduly discriminatory, or otherwise inconsistent with the tariffs, regulations and statutes administered by the Commission.

The complainants state that copies of the complaint were served on the contact for KIMIGT as listed on the Commission's Corporate Officials List, affected regulatory agencies, and others whom the complainants determined reasonably may be expected to be affected by the complaint.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on August 27, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–20365 Filed 8–24–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QF09–524–000]

Motiva Enterprises LLC; Notice of Filing of Notice of Self-Certification of Qualifying Status of a Cogeneration Facility

August 18, 2009.

Take notice that on August 10, 2009, Motiva Enterprises LLC (Applicant), located at P.O. Box 2463, Houston, TX 77252–2463, filed with the Federal Energy Regulatory Commission a notice of self-certification of a facility as a qualifying cogeneration facility pursuant to 18 CFR 292.207(a) of the Commission's regulations.

The applicant is constructing a cogeneration facility (Facility) at the site of its existing Port Arthur Refinery, located at 2555 Savannah Avenue, Port Arthur, TX 77640, to provide steam and electric energy primarily to meet the requirements of its Port Arthur Refinery—Crude Expansion Project and in part to meet the requirements of its existing Port Arthur Refinery. The Facility consist of four gas turbine generators, with four heat recovery generators, with a combined net electric capacity of 156 MW. The primary fuel for the Facility will be natural gas.

Entergy Texas Inc. is the electric utility to which the Facility will interconnect. Generation is used primarily to meet on-site demand of the Port Arthur Refinery—Crude Expansion Project; however, any surplus could be sold in the available power markets.

A notice of self-certification does not institute a proceeding regarding qualifying facility status; a notice of self-certification provides notice that the entity making the filing has determined the Facility meets the applicable criteria to be a qualifying facility. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii).

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–20370 Filed 8–24–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR09–15–001]

Arcadia Gas Storage, L.L.C.; Notice of Filing

August 18, 2009.

Take notice that on August 12, 2009, Arcadia Gas Storage, L.L.C. (Arcadia) filed its Statement of Operating Conditions in compliance with the July 13, 2009 letter order in Docket No. PR09–15–000 (July 13th Letter Order) and pursuant to section 284.123(e) of the Commission's regulations. Arcadia states that it made revisions to include a statement of rates, as required by the July 13th Letter Order.

Any person desiring to participate in this proceeding must file a motion to intervene or a protest in accordance with Rules 211 and 214 of the Commission's Rules of Practice and

Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Friday, August 28, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–20369 Filed 8–24–09; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OA–2006–0074; FRL–8948–7]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Voluntary Customer Satisfaction Surveys (Renewal); ICR Number 1711.12, OMB Control No. 2090–0019

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before September 24, 2009.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OA–2006–0074 to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *docket.oei@epa.gov,* or *by mail to:* EPA Docket Center, Environmental Protection Agency, OEI Docket, *Mailcode:* 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB *by mail to:* Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attention:* Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Patricia Bonner, National Center for Environmental Innovation [Mail Code 1807T], Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* 202–566–2204; *fax number:* 202–566–2200; *e-mail address: bonner.patricia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On March 17, 2009 (74 FR 11372), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments during the comment period. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OA–2006–0074, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the OEI Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the OEI Docket is 202–566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI) or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Voluntary Customer Satisfaction Surveys (Renewal).

ICR numbers: EPA ICR No. 1711.12, OMB Control No. 2090–0019.

ICR Status: This ICR is scheduled to expire on 8/31/09. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: EPA uses voluntary surveys to learn how satisfied EPA customers are with our services and how we can improve services, products and processes. EPA surveys individuals who use services or could have. During the next three years, EPA plans up to 56 surveys, and will use results to target/measure service delivery improvements. By seeking renewal of the generic clearance for customer surveys, EPA will have the flexibility to gather the views of our customers to better determine the extent to which our services, products and processes satisfy their needs or need to be improved. The generic clearance will speed the review and approval of customer surveys that solicit opinions from EPA customers on a voluntary basis, and do not involve ''fact-finding'' for the purposes of regulatory development or enforcement. An Agency may not conduct or sponsor, and a person is not required to respond

to a collection of information unless it has a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.09 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Past EPA customer groups targeted for customer satisfaction surveys include individual citizens, industry/business, states/other governments, and Web users.

Estimated Number of Respondents: 15,720.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 1,431.

Estimated Total Annual Cost: $8,800, includes $0 annualized capital or O&M costs.

Changes in the Estimates: There is decrease of 240 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is due to an adjustment to the estimates.

Dated: August 19, 2009.

John Moses,

Director, Collection Strategies Division.

[FR Doc. E9–20398 Filed 8–24–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–TRI–2009–0614; FRL–8948–8]

Toxic Chemical Release Reporting; Community Right-To-Know; Request for Comment on Change of Contractor Handling Trade Secret Claims

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces an upcoming change in location and contractor designated to manage the Toxics Release Inventory (TRI) data processing for all TRI submissions including TRI Trade Secret and confidential information submitted. Under Section 322 of the Emergency Planning and Community Right-to-Know Act, facilities submitting TRI reports may be eligible to claim Trade Secret for the specific chemical identity of a toxic chemical being reported. Information entitled to trade secret or confidential treatment may not be disclosed by the Agency to the Agency's authorized representative until each affected submitter has been furnished notice of the contemplated disclosure by the EPA program office and has been afforded opportunity to submit its comments. This **Federal Register** provides notice that EPA's authorized representative is changing and provides the public an opportunity to comment on this action. Limit your comments to the change of contractor handling trade secret and confidential information submitted to TRI under Emergency Planning and Community Right-to-Know reporting requirements.

DATES: Comments should be submitted by August 31, 2009.

ADDRESSES: EPA has established a docket for this action under EPA–HQ–TRI–2009–0614. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the OEI Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744, and the telephone number for the OEI Docket is 202–566–1752.

FOR FURTHER INFORMATION CONTACT: For general information, contact The Emergency Planning and Community Right-to-Know Hotline at Environmental Protection Agency, Mail Code 5101, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Toll free: 1–800–424–9346, in Virginia and Alaska: 703–412–9810, Toll free TDD: 1–800–553–7672., or *http://www.epa.gov/epaoswer/hotline/.* For technical information about this change in contractor and location for TRI data processing, contact: Peggy Bagnoli, Toxics Release Inventory Program Division, OEI (2844T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, *Telephone:* 202–566–1230; *Fax:* 202–566–0727; *e-mail: bagnoli.peggy@epa.gov.* Effective July 30, 2009, certified mail should be sent to CGI Federal, C/O CDX Reporting Center, 12601 Fair Lakes Circle, Fairfax, VA 22033. All other submissions should be sent to the TRI Reporting Center, P.O. Box 10163, Fairfax, VA 22038.

SUPPLEMENTARY INFORMATION:

I. Does This Notice Apply to Me?

A. Affected Entities: Entities that will be affected by this action are those facilities that manufacture, process, or otherwise use certain toxic chemicals listed on the Toxics Release Inventory (TRI) and which are required under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986, to report annually to EPA their environmental releases of such chemicals. Currently, those industries with the following NAICS code designations (that meet all other threshold criteria for TRI reporting) must report toxic chemical releases and other waste management activities: 11—Agriculture, Forestry, Fishing and Hunting (except for NAICS Code 111998); 21—Mining, Quarrying, and Oil and Gas Extraction (except for NAICS Codes 211112, 212324, 212325, 212393, and 212399); 22—Utilities (except for NAICS Codes 221111, 221112, 221113, 221119, 221121, 221122); 31–33—Manufacturing (except for NAICS Codes 311, 312, 313, 314, 315, 323, 325, 326, 327, 334, 335, 337, and 339); 42—Wholesale Trade; 48–49—Transportation and Warehousing (except for NAICS Code 488390); 51—Information (except for NAICS Codes 511140, 512230, and 519130); 54—Professional, Scientific, and Technical Services (except for NAICS Code 541712); 56—Administrative and Support and Waste Management and Remediation Services (except for NAICS Codes 562112, 562211, 562213, 562219, and 562920); and 81—Other Services (except Public Administration) (except for NAICS Code 811490).

To determine whether you or your business is affected by this action, you should carefully examine the applicability provisions at 40 CFR Part 350 and 40 CFR Part 372. If you have

any questions regarding the applicability of this action to a particular entity, consult the person(s) listed in the **FOR FURTHER INFORMATION CONTACT** section.

II. How Can I Get Copies of This Document and Other Related Information?

A. Docket. EPA has established an official public docket for this action under Docket ID No. EPA–HQ–TRI–2009–0614. The public docket includes information considered by EPA in developing this action, including the documents listed below, which are physically located in the docket. In addition, interested parties should consult documents that are referenced in the documents that EPA has placed in the docket, regardless of whether these referenced documents are physically located in the docket. For assistance in locating documents that are referenced in documents that EPA has placed in the docket, but that are not physically located in the docket, please consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1742, and the telephone number for the Notice of Change of Contractor Handling TRI Submissions including TRI Trade Secret Claims Docket is (202) 566–1752.

B. Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit II.A. Once in the system, select ''*search,*'' then key in the appropriate docket identification number.

III. How Can I Respond to This Notice?

A. How and To Whom Do I Submit Comments? You may submit comments through the mail, in person, or electronically. Be sure to identify the appropriate docket control number (i.e., EPA–HQ–TRI–2009–0614) in your correspondence. 1. By mail. All comments should be sent in triplicate to: Office of Environmental Information (OEI/TRI), Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Ariel Rios Building, Washington, DC 20460. 2. In person or by courier. Comments may be delivered in person or by courier to: EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093. 3. Electronically. Submit your comments electronically by e-mail to: ''*oei.docket@epa.gov*''. Please note that you should not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in Microsoft Office Word 2003 or ASCII file format. All comments and data in electronic form must be identified by the docket control number EPA–HQ–TRI–2009–0614. Electronic comments on this document may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information That I Want To Submit to the Agency? All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this document. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

IV. What Is the General Background for This Action?

A. Trade Secret. The Toxics Release Inventory (TRI) is mandated by the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and the Pollution Prevention Act (PPA) of 1990. EPCRA Section 313 and PPA Section 6607 establish requirements for reporting of toxic chemical releases and other waste management quantities. Under Section 322 of EPCRA and 40 CFR Part 350, facilities submitting TRI reports may be eligible to claim Trade Secret for the specific chemical identity of the toxic chemical being reported. To support a claim of trade secrecy, a facility may need to submit additional confidential business information. Pursuant to 40 CFR 350.23 (''Disclosure to Authorized Representatives''), information entitled to trade secret or confidential treatment may not be disclosed by the Agency to the Agency's authorized representative until each affected submitter has been furnished notice of the contemplated disclosure by the EPA program office and has been afforded a period found reasonable by that office (not less than five working days) to submit its comments. Such notice shall include a description of the information to be disclosed, the identity of the contractor, subcontractor, or grantee, the contract, subcontract, or grant number, if any, and the purposes to be served by the disclosure. This notice may be published in the **Federal Register** or may be sent to individual submitters.

V. This Notice Announces a Change of Contractor Designated To Manage the Toxics Release Inventory (TRI) Data Processing for All TRI Submissions

The contract to manage the TRI data submissions was competed in 2001 and was awarded to the Computer Sciences Corporation (CSC) (GSA Contract GSOOT99ALD0203). This contract will end September 30, 2009. A new contract was awarded to CGI, Incorporated (GS–35F4797H TO#1518) on April 1, 2009. The management of TRI data submissions will transition to CGI by the end of September 2009 and remain with CGI through March 30, 2012. This new facility will be located in Fairfax, Virginia.

Effective July 30, 2009, certified mail should be sent to CGI Federal, C/O CDX Reporting Center, 12601 Fair Lakes Circle, Fairfax, VA 22033. All other submissions should be sent to the TRI Reporting Center, P.O. Box 10163, Fairfax, VA 22038. All TRI submissions including trade secret and confidential

information submitted pursuant to 40 CFR Part 350 will be managed by CGI.

In accordance with 40 CFR 350.23, EPA has determined that CGI and their subcontractors require access to trade secret and confidential information submitted under 40 CFR Part 350 in order to receive, manage, process, and safely store such information. The contractor will have appropriate procedures and facilities in place to safeguard the TRI trade secret and confidential information to which the contractor and subcontractors have access during the term of this contract. The contractor's and subcontractor's employees will be required to sign a ''Confidentiality Agreement'' prior to being permitted access to trade secret and confidential information submitted under 40 CFR Part 350. All contractor and subcontractor access to TRI trade secret and confidential information will take place at the contractor's facility in Fairfax, VA.

Dated: August 10, 2009.

Rick Martin,

Acting Director, Office of Information Analysis and Access.

[FR Doc. E9–20397 Filed 8–24–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 9, 2009.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Bradley John Franklin, Eleanor Rose Franklin both of Sidney, Montana; and Gregory Lynn Franklin, Othello, Washington, to join a group acting in concert with John Franklin, Sidney, Montana; to acquire control of 1st United Bancorporation, Inc., Sidney, Montana, and thereby indirectly acquire and retain control of 1st Bank, Sidney, Montana.

Board of Governors of the Federal Reserve System, August 20, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–20389 Filed 8–24–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 21, 2009.

A. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105-1579:

1. Franklin Resources, Inc., San Mateo, California; to acquire up to 7 percent of the voting shares of State Bank and Trust Company, Pinehurst, Georgia.

Board of Governors of the Federal Reserve System, August 20, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–20390 Filed 8–24–09; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

Maximum Per Diem Rates for the Continental United States (CONUS)

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Notice of Per Diem Bulletin 10–01, Fiscal Year (FY) 2010 continental United States (CONUS) per diem rates.

SUMMARY: The General Services Administration's (GSA's) annual per diem review has resulted in lodging and meal allowance changes for locations within the continental United States (CONUS) to provide for the reimbursement of Federal employees' expenses covered by per diem. Per Diem Bulletin 10–01 updates the maximum per diem amounts in existing per diem localities. The CONUS per diem rates prescribed in Bulletin 10–01 may be found at *http://www.gsa.gov/perdiem*. GSA based the lodging per diem rates on the average daily rate that the lodging industry reports. The use of such data in the per diem rate setting process enhances the Government's ability to obtain policy-compliant lodging where it is needed. In conjunction with the annual lodging study, GSA identified three new non-standard areas (NSAs): Jefferson City (Cole County) and St. Robert (Pulaski County), Missouri; and Middlebury (Addison County), Vermont. The meals and incidental expense rates for all NSAs and for standard CONUS will also be updated.

For a complete listing of pertinent information that must be submitted through a Federal executive agency for GSA to restudy a location, or if a CONUS or standard CONUS per diem rate is insufficient to meet necessary expenses, please review numbers four and five of our per diem Frequently Asked Questions at (*http://www.gsa.gov/perdiemfaqs*).

DATES: This notice is effective October 1, 2009, and applies for travel performed on or after October 1, 2009 through September 30, 2010.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Jill

Denning, Office of Governmentwide Policy, Office of Travel, Transportation, and Asset Management, at (202) 208–7642, or by e-mail at *http://www.gsa.gov/perdiemquestions.* Please cite Notice of Per Diem Bulletin 10–01.

SUPPLEMENTARY INFORMATION:

A. Background

After an analysis of current data, GSA has determined that current lodging rates for certain localities do not adequately reflect the lodging economics in those areas. GSA used the same lodging rate setting methodology for establishing the FY 2010 per diem rates as when establishing the FY 2009 rates.

B. Change in Standard Procedure

GSA issues/publishes the CONUS per diem rates, formerly published in Appendix A to 41 CFR Chapter 301, solely on the Internet at *http://www.gsa.gov/perdiem.* This process, implemented in 2003, ensures more timely changes in per diem rates established by GSA for Federal employees on official travel within CONUS. Notices published periodically in the **Federal Register**, such as this one, now constitute the only notification of revisions in CONUS per diem rates to agencies.

Dated: August 20, 2009.

Becky Rhodes,

Deputy Associate Administrator.

[FR Doc. E9–20504 Filed 8–21–09; 4:15 pm]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day-09–0762]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Formative Research to Inform an HIV Testing Social Marketing Campaign for African American Men Who Have Sex with Men (MSM), formally known as Formative Research to Inform an HIV Testing Social Marketing Campaign for African American Heterosexual Men [OMB No. 0920–0762] [exp. 01/31/2011]—Revision—National Center for HIV/AIDS, Viral Hepatitis, Sexually Transmitted Diseases, and Tuberculosis Elimination Programs (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The purpose of the proposed revised study is to conduct formative research for the development of an HIV testing social marketing campaign for African American MSM, a CDC-sponsored social marketing campaign aimed at increasing HIV testing rates among young, African American MSM. The study entails conducting interviews with a sample of African American MSM, ages 18 to 44 to: (1) Explore participants' knowledge, attitudes and beliefs about HIV and HIV testing to inform the development of campaign messages; (2) identify the most motivating approach, supporting data, and key messages for materials development; (3) test creative concepts, potential campaign themes, logos and names; and (4) test creative materials developed based on the findings from the previous phases of the research. Findings from this study will be used by CDC and its partners to inform current and future program activities. Changes to the previous approved data collection consist of a change in the target audience from African American heterosexual men to African American Men who have sex with men. Instead of a combination of interviews and focus groups, now only interviews will be conducted.

A total of 288 participants will be screened for eligibility in 12 cities with high incidence and prevalence of HIV. Of the participants screened, 144 men will complete individual interviews and a short paper and pencil survey. Appropriate consent processes will be used to obtain verbal consent at the screening and interview phases of this study. The Institutional Review Board at CDC has approved the revised study. There are no costs to the respondents other than their time. The total annualized burden hours are 228.

ESTIMATE OF ANNUALIZED BURDEN TABLE

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
African American MSM	Screener	288	1	10/60
	Interview	144	1	1
	Paper and Pencil Survey	144	1	15/60

Dated: August 19, 2009.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–20374 Filed 8–24–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; NIH Intramural Research Training Program Applications

Summary: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Office of the Director (OD), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on June 16, 2009 (Volume 74, Number 114, pages 28501–28502) and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an

additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: NIH Intramural Research Training Program Applications. *Type of Information Collection Request:* Extension of a currently approved collection. *Need and Use of Information Collection:* The proposed information collection activity is necessary in order to determine the eligibility and quality of potential awardees for traineeships in ten (10) NIH intramural research training programs. *Frequency of Response:* On occasion. *Affected Public:* Individuals seeking intramural training opportunities and references for these individuals. *Type of Respondents:* Postdoctoral, predoctoral, postbaccalaureate, technical, clinical, and student applicants. The annual reporting burden is as follows: *Estimated Number of Respondents:* 67,631; *Estimated Number of Responses per Respondent:* 1.0506; *Average Burden Hours Per Response:* 0.9545; and *Estimated Total Annual Burden Hours Requested:* 67,825. The annualized cost to respondents is estimated at $2,033,085. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, *Attention:* Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Marilyn Tuttleman, M.S., Chief, Project Clearance Branch, Office of Policy for Extramural Research Administration (OPERA), OER, OD, NIH, One Rockledge Center, Room 3509, 6705 Rockledge Drive MSC 7974, Bethesda, MD 20892–7983, or call non-toll-free number 301–594–7949 or e-mail your request, including your address to: *mtuttleman@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: August 17, 2009.

Steven Alves,

Project Officer, OD, OIR, OITE, National Institutes of Health.

[FR Doc. E9–20439 Filed 8–24–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0380]

Agency Information Collection Activities; Proposed Collection; Comment Request; Product Jurisdiction: Assignment of Agency Component for Review of Premarket Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the procedure by which an applicant may obtain an assignment or designation determination for combination products.

DATES: Submit written or electronic comments on the collection of information by October 26, 2009.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, *JonnaLynn.Capezzuto@fda.hhs.gov*, 301–796–3794.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Product Jurisdiction: Assignment of Agency Component for Review of Premarket Applications—(OMB Control Number 0523)—Extension

This regulation relates to agency management and organization and has two purposes. The first is to implement section 503(g) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(g)), as added by the Safe Medical Devices Act of 1990 (Public Law 101–629), and amended by the Medical Device User Fee and Modernization Act of 2002 (Public Law 107–250), by specifying how FDA will determine the organizational component within FDA assigned to have primary jurisdiction for the premarket review and regulation of products that are comprised of any combination of the following products: (1) A drug and a device; (2) a device and a biological product; (3) a biological product and a drug; or (4) a drug, a device, and a biological product. The second purpose of this regulation is to enhance the efficiency of agency management and operations by providing procedures for classifying and determining which agency component is designated to have primary jurisdiction for any drug, device, or biological product where such jurisdiction is unclear or in dispute.

The regulation establishes a procedure by which an applicant may obtain an assignment or designation determination. The regulation requires that the request include the identity of the applicant, a comprehensive description of the product and its proposed use, and the applicant's recommendation as to which agency component should have primary jurisdiction, with an accompanying statement of reasons. The information submitted would be used by FDA as the basis for making the assignment or designation decision. Most information required by the regulation is already required for premarket applications affecting drugs, devices, biological products, and combination products. The respondents will be businesses or other for-profit organizations.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Part 3	43	1	43	24	1,032

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

These burden estimates are based on the number of applications FDA received over the past 2 fiscal years.

Dated: August 18, 2009.

David Horowitz,

Assistant Commissioner for Policy

[FR Doc. E9–20409 Filed 8–24–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0373]

Agency Information Collection Activities; Proposed Collection; Comment Request; Mental Models Study of Recruitment and Retention of Pregnant Women into an Asthma Pregnancy Registry

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection provisions of the Mental Models Study of Recruitment and Retention of Pregnant Women into an Asthma Pregnancy Registry. Pregnancy registries are a common source of safety information about medications used during pregnancy. Together with other information being collected, FDA will use the results from this study to better understand how pregnant women and their health care providers make decisions about participation in pregnancy exposure registries. FDA will use this new knowledge to develop and recommend effective ways to support the involvement of health care providers and pregnant women in pregnancy registries. Ultimately, greater involvement of health care providers and pregnant women in pregnancy registries will improve the quality of safety information gathered through the registries. Better safety information will support informed treatment decisions by health care providers and women who need prescription medications while pregnant.

DATES: Submit written or electronic comments on the collection of information by October 26, 2009.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Liz Berbakos, Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, *Elizabeth.Berbakos@fda.hhs.gov*, 301–796–3792.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60–day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether

the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Mental Models Study of Recruitment and Retention into an Asthma Pregnancy Registry

The authority for FDA to collect the information derives from the FDA Commissioner's authority, as specified in section 903(d)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 393(d)(2)).

The proposed information collection will help FDA advance public health by identifying priorities, perceptions and communication needs about how pregnant women and their health care providers make decisions about participation in a pregnancy registry. Understanding these priorities, perceptions and communication needs will foster more effective approaches to recruitment of pregnant women into pregnancy registries and full retention of those women until the end of the registry study period. Ultimately, early enrollment and complete follow up of women in pregnancy registries will strengthen the quality of safety data about use of needed medications during pregnancy.

Before a medication is approved by FDA for sale in the United States, pregnant women are rarely included in experimental research studies of the medication because of concerns that the experimental treatment may harm the developing fetus and/or the pregnant woman. As a result, when a medication is approved for marketing in the United States, little systematically collected human data are available to define the chance of serious side effects in pregnant women and/or their developing fetuses from use of the medication during pregnancy.

A pregnancy registry is a research study conducted after a medication has been approved, during which pregnant women being treated with the medication are observed to identify possible harms to the woman and/or to her developing fetus. Pregnant women voluntarily enroll in a pregnancy registry; data about the pregnancy, labor, delivery and newborn are collected and analyzed to identify any serious adverse outcomes and consider whether use of the medication may be linked to any observed harm. The quality of pregnancy registry data is enhanced by enrollment of women early in their pregnancy and by complete follow up of all enrolled pregnancies to the end of the registry study period.

Ultimately, high quality human pregnancy data gathered through a pregnancy registry and incorporated into medical product labeling will provide patients and their health care provider's useful information so they may make informed medical treatment decisions during pregnancy. Data collected from this mental models study will be incorporated into recommendations for improvement of the quality of pregnancy registries, ultimately improving medical treatment decisions, and potentially improving pregnancy outcomes.

FDA engages in various regulatory and communication activities to support, and at times, require collection of safety data through establishment of a pregnancy registry. Pregnancy exposure registries are a major source of human pregnancy data for product labeling; therefore, FDA is committed to fostering ongoing improvements in the design and conduct of pregnancy registries. In 2002 FDA issued Guidance for Industry entitled ''Establishing Pregnancy Exposure Registries'' (see *http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/ucm071639.pdf*). This guidance provides an overview of pregnancy exposure registries, describing when and how to conduct a pregnancy registry about treatment of a disease in pregnancy or use of a specific medication or group of medications during pregnancy. The FDA Office of Women's Health maintains a list of current pregnancy registries on its Web site, see *http://www.fda.gov/ScienceResearch/SpecialTopics/WomensHealthResearch/ucm134844.htm*. FDA regulations (21 CFR 201.57) describe the content of required product labeling for prescription drugs. On May 28, 2008, FDA proposed major revisions to required product labeling to provide better information about the effects of medicines used during pregnancy. Enactment of the Food, Drug and Cosmetics Amendments Act of 2007 gave FDA new legal authority to require post-approval studies to assess certain safety concerns, including, in certain situations, establishment of a pregnancy registry. Through this data collection and analysis, FDA will identify and address the perceptions and communication needs of pregnant women and health care providers to support their participation in pregnancy registries.

The project will use ''mental modeling,'' a qualitative research method that compares a model of the priorities, perceptions, communication needs, and decision-making processes of a group or groups to a model of the same priorities, perceptions, communication needs, and decision-making processes developed from expert knowledge and experience. In this study, the decision models of women who are current or potential participants in a pregnancy registry and of health care providers who have participated or might participate in a pregnancy registry will be derived through qualitative structured interviews. The project focuses on an asthma disease-based pregnancy registry; the three cohorts to be interviewed are described in detail in the following paragraphs.

Using information gathered from the interviews, the decision model about pregnancy registry involvement for pregnant women and health care providers will be developed and then compared to decision models about pregnancy registry involvement that were derived from experts in the fields of obstetrical and asthma treatment during pregnancy, design and conduct of pregnancy registries, FDA medication regulation, and biomedical ethics. FDA will use telephone interviews with the three cohorts to determine the priorities, perceptions, communication needs and other factors that influence decisions about participation in a pregnancy registry by pregnant women and health care providers. A comparison between an expert model and models based on the information collected directly from women and health care providers may identify consequential perception, priority and communication gaps that can be redressed through strategic efforts to foster involvement in pregnancy registries designed by FDA or others.

Using a protocol derived from the research that resulted in the ''expert model,'' trained interviewers will conduct one-on-one telephone discussions with a total of 60 individuals (20 individuals per cohort) from the three cohorts described here:

(1) Potential Pregnancy Registry Participants: women older than 18 years who are currently being treated for asthma and are pregnant or have been pregnant within the past 18 months, and who may or may not currently be participating in a pregnancy registry;

(2) Current Pregnancy Registry Participants: pregnant women older

than 18 years who are current participants in any pregnancy registry for a chronic condition; and

(3) Health Care Providers: to include a mix of health care providers (including specialists, obstetrician-gynecologists, and primary care providers) some who have participated in a pregnancy registry and some who have not participated in a pregnancy registry.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
60	1	1	1.0	60.0
Total				60.0

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The study will involve about 60 respondents and take approximately 1 hour each to complete. These estimates are based on the Contractor's extensive experience with mental models research.

Dated: August 18, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–20407 Filed 8–24–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0664]

Peripheral and Central Nervous System Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Peripheral and Central Nervous System Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on October 14, 2009, from 8 a.m. to 5 p.m.

Location: The Inn and Conference Center, University of Maryland University College (UMUC), Marriott Conference Centers, 3501 University Blvd. East, Adelphi, MD. The hotel telephone number is 301–985–7300.

Contact Person: Diem-Kieu Ngo, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, e-mail: *diem.ngo@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512543. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: The committee will discuss new drug application (NDA) 22–250, with the proposed trade name AMAYA (fampridine) 10 milligram (mg) tablets, manufactured by Acorda Therapeutics, Inc. The proposed indication for this new drug product is to improve walking ability in individuals with multiple sclerosis (MS). MS is a neurological disease that may cause a wide variety of possible symptoms, including in some patients difficulty in walking.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before September 29, 2009. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before September 21, 2009. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by September 22, 2009.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Diem-Kieu Ngo at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 19, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–20380 Filed 8–24–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0664]

Oncologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Oncologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on October 5, 2009, from 8 a.m. to 5 p.m.

Location: Hilton Washington DC North/Gaithersburg, The Ballrooms, 620 Perry Pkwy., Gaithersburg, MD. The hotel phone number is 301–977–8900.

Contact Person: Nicole Vesely, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–6793, FAX: 301–827–6776, e-mail: *nicole.vesely@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512542. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: The committee will discuss the following topics:

(1) Supplemental biologics license application (sBLA) 103949/5153.0, PEGINTRON (peginterferon alfa-2b) injection, manufactured by Schering Corp. The proposed indication (use) for this product is as an adjuvant (additional) treatment for melanoma, a kind of skin cancer. The primary treatment for melanoma that is metastatic (has spread) to the lymph nodes is surgery to remove both the original cancer and lymph nodes surrounding the cancer. PEGINTRON's proposed use is as a treatment in addition to, or as an ''adjuvant,'' to surgery.

(2) New drug application (NDA) 022–465, proposed trade name VOTRIENT (pazopanib) tablets, manufactured by GlaxoSmithKline. The proposed indication (use) for this product is for the treatment of patients with advanced renal cell carcinoma, a form of kidney cancer.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before September 21, 2009. Oral presentations from the public will be scheduled between approximately 10:30 a.m. and 11 a.m., and between approximately 3:30 p.m. and 4 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before September 11, 2009. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by September 14, 2009.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Nicole Vesely at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 19, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–20379 Filed 8–24–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, NIA.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute on Aging, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIA.

Date: October 20–21, 2009.

Closed: October 20, 2009, 8 a.m. to 8:30 a.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, 3rd Floor Conference Room, Baltimore, MD 21224.

Open: October 20, 2009, 8:30 a.m. to 11:55 a.m.

Agenda: Committee Discussion.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, 3rd Floor Conference Room, Baltimore, MD 21224.

Closed: October 20, 2009, 11:55 a.m. to 1 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, 3rd Floor Conference Room, Baltimore, MD 21224.

Open: October 20, 2009, 1 p.m. to 2:30 p.m.

Agenda: Committee Discussion.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, 3rd Floor Conference Room, Baltimore, MD 21224.

Closed: October 20, 2009, 2:30 p.m. to 2:45 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, 3rd Floor Conference Room, Baltimore, MD 21224.

Open: October 20, 2009, 2:45 p.m. to 3:15 p.m.

Agenda: Committee Discussion.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, 3rd Floor Conference Room, Baltimore, MD 21224.

Closed: October 20, 2009, 3:15 p.m. to 4:15 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, 3rd Floor Conference Room, Baltimore, MD 21224.

Closed: October 21, 2009, 8 a.m. to 8:30 a.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview

Boulevard, 3rd Floor Conference Room, Baltimore, MD 21224.

Open: October 21, 2009, 8:30 a.m. to 12:45 p.m.

Agenda: Committee Discussion.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, 3rd Floor Conference Room, Baltimore, MD 21224.

Closed: October 21, 2009, 12:45 p.m. to 1:45 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, 3rd Floor Conference Room, Baltimore, MD 21224.

Contact Person: Dan L. Longo, MD, Scientific Director, National Institute on Aging, Gerontology Research Center, National Institutes of Health, 5600 Nathan Shock Drive, Baltimore, MD 21224–6825. 410–558–8110. *dl14q@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 19, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–20509 Filed 8–24–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the AIDS Research Advisory Committee, NIAID.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: AIDS Research Advisory Committee, NIAID, AIDS Vaccine Research Subcommittee.

Date: September 15–16, 2009.

Time: 8:30 a.m. to 5 p.m.

Agenda: To discuss recent developments and future plans in AIDS vaccine research, development and clinical testing.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: James A. Bradac, PhD, Program Official, Preclinical Research and Development Branch, Division of AIDS, Room 5116, National Institutes of Health/NIAID, 6700B Rockledge Drive, Bethesda, MD 20892–7628, 301–435–3754, *jbradac@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 18, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–20314 Filed 8–24–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Healthcare Infection Control Practices Advisory Committee (HICPAC); Meeting Notice

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting for the aforementioned committee:

Time and Date: 2 p.m.–3 p.m., September 9, 2009.

Place: The teleconference call will originate at the CDC.

Status: Open to the public. Teleconference access limited only by availability of telephone ports. To participate in the teleconference please dial 1–888–324–8568 and enter conference code 7126207.

Purpose: The Committee is charged with providing advice and guidance to the Secretary, HHS; the Assistant Secretary for Health; the Director, CDC; and the Director, National Center for Preparedness, Detection, and Control of Infectious Diseases (NCPDCID), regarding: (1) The practice of hospital infection control; (2) strategies for surveillance, prevention, and control of infections (*e.g.,* nosocomial infections), antimicrobial resistance, and related events in settings where healthcare is provided; and (3) periodic updating of guidelines and other policy statements regarding prevention of healthcare-associated infections and healthcare-related conditions.

Matters To Be Discussed: The agenda will include a follow-up discussion on the *Draft Guideline for Prevention of Catheter-Associated Urinary Tract Infections 2008,* available on the following HICPAC Web page: *http://www.cdc.gov/ncidod/dhqp/hicpac_schedule.html.*

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Wendy Vance, HICPAC, Division of Healthcare Quality Promotion, NCPDCID, CDC, 1600 Clifton Road, NE., Mailstop A–07, Atlanta, Georgia 30333.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: August 17, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. E9–20373 Filed 8–24–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Committee on Rural Health and Human Services; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the following committee will convene its sixty-third.

Name: National Advisory Committee on Rural Health and Human Services.

Dates and Times: September 9, 2009, 9 a.m.–4:45 p.m.; September 10, 2009, 8:30 a.m.–4 p.m.; September 11, 2009, 8:45 a.m.–11 a.m.

Place: Sheraton Grand Hotel, 1230 J Street, Sacramento, California 95814, *Phone:* 916–341–3605.

Status: The meeting will be open to the public.

Purpose: The National Advisory Committee on Rural Health and Human Services provides advice and recommendations to the Secretary with respect to the delivery, research, development and administration of health and human services in rural areas.

Agenda: Wednesday morning, at 9 a.m., the meeting will be called to order by the Chairperson of the Committee, the Honorable David Beasley. The first two presentations will be overviews of rural California. The remainder of the day the Committee will hear presentations on the three chosen Subcommittee topics. The first panel will focus on Primary Care Workforce. The second panel is Home-Based Care Options for Seniors. The final panel of the day is Health Care Provider Integration. After the panel discussions, the Committee Chair will give an overview of the site visits. This will be followed by a call for public comment. The Tuesday meeting will close at 4:45 p.m.

Thursday morning, at 8:30 a.m., the Committee will break into Subcommittees and depart to the site visits. The Primary Care Workforce Subcommittee and the Health Care

Provider Integration Subcommittee will meet at Sutter Amador Hospital in Jackson, California. The Home-Based Care Options for Seniors Subcommittee will meet at Madelyn Helling Library in Nevada City, California. The Subcommittees will return to the Sheraton Grand Hotel in Sacramento at 4 p.m. Transportation to the site visits will not be provided to the public. The Thursday meeting will close at 4 p.m.

The final session will be convened on Friday morning at 8:45 a.m. The meeting will open with a review of the Subcommittee site visits. The staff of the Office of Rural Health Policy will provide an update on the Department of Health and Human Services. The Committee will draft a letter to the Secretary or Designee and discuss the February 2010 meeting. The meeting will be adjourned at 11 a.m.

For Further Information Contact: Anyone requiring information regarding the Committee should contact Jennifer Chang, MPH, Executive Secretary, National Advisory Committee on Rural Health and Human Services, Health Resources and Services Administration, Parklawn Building, Room 9A–55, 5600 Fishers Lane, Rockville, MD 20857, Telephone (301) 443–0835, Fax (301) 443–2803.

Persons interested in attending any portion of the meeting should contact Michele Pray Gibson, Office of Rural Health Policy (ORHP), Telephone (301) 443–0835. The Committee meeting agenda will be posted on ORHP's Web site *http://www.ruralhealth.hrsa.gov*.

Dated: August 19, 2009.

Alexandra Huttinger,

Director, Division of Policy Review and Coordination.

[FR Doc. E9–20342 Filed 8–24–09; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0664]

Joint Meeting of the Anesthetic and Life Support Drugs Advisory Committee and the Drug Safety and Risk Management Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committees: Anesthetic and Life Support Drugs Advisory Committee and the Drug Safety and Risk Management Advisory Committee.

General Function of the Committees: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on September 24, 2009, from 8 a.m. to 4:30 p.m.

Location: Holiday Inn, The Ballrooms, Two Montgomery Village Ave., Gaithersburg, MD. The hotel phone number is 301–948–8900.

Contact Person: Kalyani Bhatt, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, e-mail: *Kalyani.Bhatt@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), codes 3014512529 or 3014512535. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On September 24, 2009, the committees will begin with a closed session from 8 a.m. to 9:15 a.m. Following the closed session, from 9:15 a.m. to 4:30 p.m., the meeting will be open to the public.

The committees will discuss new drug application (NDA) 22–272, OXYCONTIN (oxycodone hydrochloride controlled-release) Tablets, Purdue Pharma L.P., and its safety for the proposed indication of management of moderate to severe pain when a continuous, around-the-clock analgesic is needed for an extended period of time. This formulation was previously reviewed and discussed by these committees on May 5, 2008, and will be considered again in light of new data.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available a *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee link.

Procedure: On September 24, 2009, from 9:15 a.m. to 4:30 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before September 10, 2009. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before September 1, 2009. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by September 2, 2009.

Closed Presentation of Data: On September 24, 2009, from 8 a.m. to 9:15 a.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)). The meeting will be closed to permit discussion of confidential information regarding detailed protocols to evaluate the formulation of the drug product. Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Kalyani Bhatt at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 19, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–20376 Filed 8–24–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Joint Meeting of the Anesthetic and Life Support Drugs Advisory Committee and the Drug Safety and Risk Management Advisory Committee; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration (FDA) is announcing an amendment to the notice of a meeting of the Anesthetic and Life Support Drugs Advisory Committee and the Drug Safety and Risk Management Advisory Committee. This meeting was announced in the **Federal**

Register of August 11, 2009 (74 FR 40207). The amendment is being made to reflect a change in the *Agenda* portion of the document. There are no other changes.

FOR FURTHER INFORMATION CONTACT: Kalyani Bhatt, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, e-mail: *Kalyani.Bhatt@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington DC area), codes 3014512529 or 3014512535. Please call the Information Line for up-to-date information on this meeting.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 11, 2009, FDA announced that a meeting of the Anesthetic and Life Support Drugs Advisory Committee and the Drug Safety and Risk Management Advisory Committee would be held on September 23, 2009, from 8 a.m. to 4:30 p.m. On page 40207, in the second column, the *Agenda* portion of the document is changed to read as follows:

Agenda: The committees will discuss new drug application (NDA) 21–217, EXALGO (hydromorphone HC1), Neuromed Pharmaceuticals, Inc., a modified-release hydromorphone drug product indicated for the treatment of moderate-to-severe pain in opioid-tolerant patients.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to the advisory committees.

Dated: August 19, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–20377 Filed 8–24–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0664]

Oncologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Oncologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on October 6, 2009, from 8 a.m. to 4 p.m.

Location: Hilton Washington DC North/Gaithersburg, The Ballrooms, 620 Perry Pkwy., Gaithersburg, MD. The hotel phone number is 301–977–8900.

Contact Person: Nicole Vesely, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–6793, FAX: 301–827–6776, e-mail: *nicole.vesely@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512542. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: The committee will discuss new drug application (NDA) 021–825, proposed trade name FERRIPROX (deferiprone) film-coated tablets and oral solution, manufactured by ApoPharma Inc. The proposed indications (uses) for this product is as an iron chelating agent, which is a drug that binds with iron in the body and helps to make elimination of iron easier, reducing iron build-up. There are two specific proposed indications (uses) of FERRIPROX: (1) the treatment of iron overload, or build-up in patients with transfusion-dependent thalassemia, an inherited blood disorder that necessitates frequent transfusion of normal blood which can lead to iron build-up due to the iron content in the blood a patient receives; and (2) for the treatment of iron overload in patients with other transfusion-dependent anemias (other blood disorders that require frequent transfusions) for which the use of other iron chelating agents has been considered inappropriate.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before September 21, 2009. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before September 11, 2009. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by September 14, 2009.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Nicole Vesely at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 19, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–20378 Filed 8–24–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Crew Member's Declaration

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30–Day notice and request for comments; Revision of an existing information collection: 1651–0021.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Crew Member's Declaration. This is a proposed extension and revision of an information collection that was

previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (74 FR 30103) on June 24, 2009, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before September 24, 2009.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

Title: Crew Member's Declaration.

OMB Number: 1651–0021.

Form Number: Form 5129.

Abstract: The Form 5129 is used to accept and record importations of merchandise by crewmembers, and to enforce agricultural quarantines, currency reporting laws, and revenue collection laws. CBP is proposing to increase the burden hours for this collection of information as a result of increasing the estimated time to fill out Form 5129 from 3 minutes to 10 minutes.

Current Actions: This submission is being made to extend the expiration date with a change to the burden hours.

Type of Review: Revision and Extension.

Affected Public: Businesses.

Estimated Number of Respondents: 6,000,000.

Estimated Time per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 996,000.

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229–1177, at 202–325–0265.

Dated: August 12, 2009.

Tracey Denning,

Agency Clearance Officer, Customs and Border Protection.

[FR Doc. E9–20425 Filed 8–24–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1854–DR; Docket ID FEMA–2008–0018]

Iowa; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Iowa (FEMA–1854–DR), dated August 13, 2009, and related determinations.

DATES: *Effective Date:* August 13, 2009.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 13, 2009, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Iowa resulting from a severe storm on July 10, 2009, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Iowa.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Michael L. Parker of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following area of the State of Iowa has been designated as adversely affected by this major disaster:

Black Hawk County for Public Assistance.

All counties within the State of Iowa are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. E9–20420 Filed 8–24–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1855–DR; Docket ID FEMA–2008–0018]

Kentucky; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Kentucky (FEMA–1855–DR), dated August 14, 2009, and related determinations.

DATES: *Effective Date:* August 14, 2009.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 14, 2009, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the Commonwealth of Kentucky resulting from severe storms, straight-line winds, and flooding on August 4, 2009, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the Commonwealth of Kentucky.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance will be limited to 75 percent of the total eligible costs. If Public Assistance is later requested and warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Michael J. Lapinski, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following area of the Commonwealth of Kentucky has been designated as adversely affected by this major disaster:

Jefferson County for Individual Assistance.

All counties within the Commonwealth of Kentucky are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. E9–20417 Filed 8–24–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1852–DR; Docket ID FEMA–2008–0018]

Maine; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Maine (FEMA–1852–DR), dated July 30, 2009, and related determinations.

DATES: *Effective Date:* August 18, 2009.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Maine is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of July 30, 2009.

Piscataquis County for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. E9–20338 Filed 8–24–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[CBP Dec. 09–34]

Notice of Postponement of H–2A and H–2B Temporary Worker Visa Exit Program Pilot

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice; postponement of commencement date.

SUMMARY: U.S. Customs and Border Protection (CBP) announces the postponement of the commencement date of the H–2A and H–2B Temporary Worker Visa Exit Program Pilot, originally set for August 1, 2009. The pilot program will require temporary workers within H–2A and H–2B nonimmigrant classifications that enter the United States at either the port of San Luis, Arizona or the port of Douglas, Arizona, to depart from one of those ports and to submit certain biographical and biometric information at one of the kiosks established for this

purpose. A delay of the commencement date is necessary to ensure that the kiosks are fully operational.

DATES: The pilot program will commence December 8, 2009.

FOR FURTHER INFORMATION CONTACT: Ms. Erin M. Martin via e-mail at *ERIN.Martin@dhs.gov*.

SUPPLEMENTARY INFORMATION: On December 18, 2008, U.S. Customs and Border Protection (CBP) published a Notice in the **Federal Register** (73 FR 77049), announcing that CBP is establishing a new land-border exit system for H–2A temporary workers, starting on a pilot basis, at certain designated ports of entry.[1] This notice was published concurrently and is in accordance with a Final Rule published by the Department of Homeland Security (DHS) in the **Federal Register** (73 FR 76891). The Final Rule implements the pilot program by adding 8 CFR 215.9, which provides that an alien admitted on an H–2A visa at a port of entry participating in the Temporary Worker Visa Exit Program must also depart at the end of his or her authorized period of stay through a port of entry participating in the program and present designated biographic and/or biometric information upon departure. As required by 8 CFR 215.9, CBP published a Notice in the **Federal Register** (73 FR 77049) designating H–2A workers that enter the United States at either the port of San Luis, Arizona or the port of Douglas, Arizona, as participants in the Temporary Worker Visa Exit Program, who must depart from one of those ports and submit certain biographical and biometric information at one of the kiosks established for this purpose.

On December 19, 2008, CBP published a Notice of Expansion of Temporary Worker Visa Exit Program Pilot To Include H–2B Temporary Workers in the **Federal Register** (73 FR 77817), in line with the Final Rule published concurrently by DHS in the **Federal Register** (73 FR 78104).[2] The Final Rule expands the pilot program by amending 8 CFR 215.9, to provide that aliens admitted on an H–2B visa at a port of entry participating in the Temporary Worker Visa Exit Program must also depart at the end of his or her authorized period of stay through a port of entry participating in the program and present designated biographic and/or biometric information upon departure. As required by 8 CFR 215.9, as amended, CBP published a Notice in the **Federal Register** (73 FR 77817) to include H–2B workers in the Temporary Worker Visa Exit Program at the ports of San Luis, Arizona and Douglas, Arizona.

Pursuant to the Notices in the **Federal Register** (73 FR 77049 and 73 FR 77817) published by CBP containing all the required elements referenced in 8 CFR 215.9, as amended, any alien that is admitted on an H–2A or H–2B visa into the United States at a designated port on or after August 1, 2009, is subject to the pilot program. However, in order to ensure that the facilities necessary to implement the pilot program are fully operational and meet the needs of the agency and the public, this notice postpones the start date of the pilot program. Accordingly, this notice postpones the start of the pilot program from August 1, 2009 to December 8, 2009.

Dated: August 20, 2009.

Jayson P. Ahern,

Acting Commissioner, U.S. Customs and Border Protection.

[FR Doc. E9–20424 Filed 8–24–09; 8:45 am]

BILLING CODE 9111–14–P

[1] The H–2A nonimmigrant classification applies to aliens seeking to perform agricultural labor or services of a temporary or seasonal nature in the United States. Immigration and Nationality Act (Act or INA) sec. 101(a)(15)(H)(ii)(a), 8 U.S.C. 1101(a)(15)(H)(ii)(a); *see* 8 CFR 214.1(a)(2) (designation for H–2A classification).

[2] The H–2B nonimmigrant classification applies to foreign workers coming to the U.S. temporarily to perform temporary, non-agricultural labor or services. Immigration and Nationality Act (Act or INA) sec. 101(a)(15)(H)(ii)(b), 8 U.S.C. 1101(a)(15)(H)(ii)(b); *see* 8 CFR 214.1(a)(2) (designation for H–2B classification).

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5291–N–05]

Privacy Act; Notification of a New Privacy Act System of Records, Institution Master File (IMF)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notification of a New Privacy Act System of Records.

SUMMARY: The Department of Housing and Urban Development HUD proposes to amend one of its system of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed new system of record is the IMF/F51. The IMF System maintains a file of institutions (Title I lenders and Title II mortgagees) which have been approved by the U.S. Department of Housing and Urban Development (HUD) to participate in the Departments Federal Housing Administration (FHA) Mortgage Insurance Programs. The principal objective of the IMF is to consolidate information on the approval status of mortgagees and lenders participating in FHA's insurance programs.

DATES: *Effective Date:* This action shall be effective without further notice on September 24, 2009 unless comments are received that would result in a contrary determination.

Comments Due Date: September 24, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5:00 pm weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Donna Robinson-Staton, Departmental Privacy Act Officer, 451 Seventh Street, SW., Room 2256, Washington, DC 20410, Telephone Number (202) 402–8047. (This is not a toll-free number.) A telecommunication device for hearing and speech-impaired individuals (TTY) is available at (800) 877–8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, notice is given that HUD proposes to establish a new system of records, identified as the Institution Master File (IMF).

Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be afforded a 30-day period in which to comment on the new system of records.

The new system report was submitted to the Office of Management and Budget (OMB), the Senate Committee on Governmental Affairs, and the House Committee on Government Reform pursuant to paragraph 4c of Appendix 1 to OMB Circular No. A–130, ''Federal Responsibilities for Maintaining Records About Individuals,'' July 25, 1994, (59 FR 37914).

Authority: 5 U.S.C. 552a 88 Stat. 1896; 42 U.S.C. 3535(d).

Dated: August 14, 2009.

Jerry E. Williams,

Chief Information Officer.

HUD/HS/60

SYSTEM NAME:

Institution Master File (IMF).

SYSTEM LOCATION:

The system is physically housed in a government-owned building (i.e., the U.S. Department of Housing and Urban

Development) in Washington, DC and at HUD's Charleston, West Virginia field office; backup facilities are located in HUD's Pennsylvania office. These buildings are occupied by the Department of HUD's Civil Service employees and contractor personnel (that use picture identification cards to access the buildings) and are not open to the general public. System software is loaded on computers in HUD Headquarters in Washington, DC. Servicing Contractors access HUD systems via Virtual Private Network (VPN).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The Institution Master File (IMF) maintains data on Title I lenders and Title II mortgagees who originate, underwrite or service a HUD-insured mortgage.

CATEGORIES OF RECORDS IN THE SYSTEM:

IMF includes data such as the lender's first name, last name, Social Security Number (SSN) and title/position (i.e., Chief Executive Officer). The IMF application includes data such as the principal employee's name (i.e., first and last), email address, title, and SSN. The other records include the following data elements: Tax ID, Title I ID, Institution ID, GNMA ID, Institution Name, Institution Type, Insurance Type, Mortgage Type, Doing Business As (aka *Fictitious Name),* Fiscal Year End, Approval Date, Phone Number, Fax, E-mail, and Geographical Address.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Housing Act of 1937 as amended (Pub. L. 75–412).

PURPOSE:

The IMF maintains the official record of Institutions (Title I lenders and Title II mortgagees) that are approved by HUD/Federal Housing Administration (FHA) to originate, service, or invest in FHA-insured mortgages or loans. The IMF centralizes institution data needed for the operation of FHA's home mortgage, project mortgage and home improvement, mobile homes and manufactured homes. This information is used by more than a dozen other Housing and Ginnie Mae systems for validation of institutional identification/approval, validation of relationships between sponsor and loan correspondents, lender notifications, and claim payments. In addition to being a critical component of insurance application processing and accounting, an extract from the IMF, together with data from the Single Family Housing Enterprise Data Warehouse (SFHEDW), on HUD's Web site, allows the public to locate approved institutions located or doing business in their area. IMF data (e.g., lender's name, address, telephone, fax number, and e-mail address) is extracted and posted on HUD's Web site (*http://www.hud.gov/ll/code/llslcrit.cfm*) to apprise the public of all FHA-approved lenders within their respective geographic areas. This information is releasable through the Freedom of Information Act (Pub. L. 89–554, 80 Stat., 383; Amended 1996, 2002, 2007). The IMF is used to generate correspondence welcoming newly approved lenders, reminding institutions of their annual certification requirements, warning and subsequently advising institutions of withdrawal of their approval for failure to submit required documentation or pay the required annual recertification fee. The principal objectives of the IMF are to consolidate information on the approval status of mortgagees and lenders participating in FHA's insurance programs. The approval information is fed to FHA processing systems for use in processing and editing individual mortgage/loan insurance applications, servicing transactions, and claims. The IMF is the repository for banking information (encrypted) for wire transferring payments to mortgagees/lenders for claim reimbursements and premium refunds. The personal information collected pertains to the SSNs and Names of the Lenders. The purpose of the information being collected is to ensure that any senior officer (e.g., Chief Executive Officer (CEO), Chief Financial Officer (CFO), partner, director, or principal is in compliance with Section 203(b) of the Helping Families Save Their Homes Act of 2009, which was enacted on May 20, 2009. The Privacy Impact Assessment is currently being re-visited and updated as necessary to incorporate HUD's new Electronic Annual Certification Process for FHA-approved lenders. Under the former certification process, lenders certified manually via the submission of a Title II Yearly Verification Report (i.e., V-Form).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

All external disclosure of data must be accounted for or information from the system is not released. If unaccounted for, data from the system cannot be disclosed to any entity external to HUD, including contractors. The following are examples of routine uses of data maintained in the system:

1. HUD's Office of Policy Development and Research often use IMF data (i.e., non-personally identifiable information) to conduct studies and statistical reports—directly related to the management of HUD's FHA Lender and Mortgagee Certification Program;

2. HUD's Office of Lender Activities and Program Compliance use IMF data (i.e., non-personally identifiable information) to create correspondence for lenders and mortgagees, reminding them of their annual renewal requirements and notifying them of their non-compliance with Departmental rules and requirements for continued program participation; and

3. Internal HUD Users and HUD's Office of Lender Activities and Program Compliance contractors (required to modify IMF per the terms of their contract) have limited access to ''read only'' data. As such, HUD staff and contractors do not have access to privacy information.

4. Additional Disclosure for Purposes of Facilitating Responses and Remediation Efforts in the Event of a Data Breach. A record from a system of records maintained by this Department may be disclosed to appropriate agencies, entities, and persons when:

a. The Department suspects or has confirmed that the security or confidentiality of information in a system of records has been compromised;

b. The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and,

c. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data is stored on magnetic discs and tapes. UPS is used to transport the tapes on which data is stored. There is a courier log at the data center. As of August 2009, there will be no magnetic discs or tapes. Furthermore, there are no printouts and hardcopies stored, maintained, or generated from the system. The hard copy V-Form is filed and maintained on microfilm. However,

there is no privacy information on the hard copy of the V-form.

RETRIEVING:

Data is retrieved by the Lenders' first and last name, and Social Security Number. Federal employees and FHA-approved lenders must access IMF by inputting their User IDs and Passwords, issued by the Department of HUD. Again, all users with access to IMF are unable to view personally identifiable data as they have access to ''read only'' data.

SAFEGUARDS:

Records are maintained in a secured computer network behind HUD's protective automated firewall, which ensures limited access to those persons whose official duties require the use of such records. Access to automated records is limited to authorized personnel who must receive a valid User ID and password. All HUD users and developers access the system from work stations connected through the local area network (LAN) routers to the Department's IBM Mainframe platform. Mortgagee/Lender employees view and/or update selected data in the system through HUD's WEB portal, FHA Connection. Functional access is granted on an ''as needed'' basis only by the IMF Security Administrator or the Security Coordinator for the lending institution, as appropriate.

IMF's software packages provide authentication of a User. User authorizations are controlled at the application level. The IMF system controls all online screen authorizations on the Customer Information Control System (CICS). Also, the FHA Connection security administration's application controls access to the FHA Connection modules of the IMF system. HUD will safeguard the SSN and personal identifying information obtained pursuant to 26 U.S.C. 6103(l)(7) (A) and (B) in accordance with 26 U.S.C. 6103(p)(4), and the IRS's ''Tax Information Security Guidelines for Federal, State and Local Agencies,'' Publication 1075 (REV 6/2000). Security and private measures are in place for the organization's implementation of the appropriate safeguards to assure confidentiality, integrity and availability of personal information.

RETENTION AND DISPOSAL:

Records will be retained and disposed of in accordance with the General Records Schedule included in HUD Handbook 2228.2, appendix 14, item 25; and appendices 15 and 20. HUD handles and retains output data (i.e., stored on magnetic discs and tapes) from the information system in accordance with applicable laws, Executive Orders, directives, policies, regulations, standards, and operational requirements.

Computerized records are maintained in a password-protected environment. If information is needed for evidentiary purposes, documentation will be referred to the HUD Office of Inspector General (OIG) in Washington, DC or other appropriate Federal, State or local agencies charged with the responsibility of investigating or prosecuting violators of Federal law. Documents referred to HUD's OIG will become part of OIG's investigative files.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Housing/Single Family Housing Office of Lender Activities and Program Compliance (System Owner), Department of Housing and Urban Development, 451 Seventh Street, SW., Room B133/P3214, Washington, DC 20410.

RECORDS ACCESS AND NOTIFICATION PROCEDURE:

For information, assistance, or inquiry about existence of records, contact Donna Robinson-Staton, Departmental Privacy Act Officer, 451 Seventh Street, SW., Room 2256, Washington, DC 20410, telephone (202) 402–8073 in accordance with the procedures in 24 CFR Part 16. Written request for access to records must include satisfactory proof of identity. The means of proof by certificate of a notary public or equivalent officer empowered to administer oaths must accompany the request. The certificate within or attached to the letter must include full name, current address, city and state of birth, copy of drivers license or equivalent bearing the requester's signature.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned, appear in 24 CFR Part 16. If additional information or assistance is needed, it may be obtained by contacting:

(i) In relation to contesting contents of records, the Departmental Privacy Act, Department of Housing and Urban Development, 451 Seventh Street SW., Room 2256, Washington, DC 20410.

(ii) In relation to appeals of initial denials, the HUD Departmental Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

RECORD SOURCE CATEGORIES:

Information in this system of records is supplied directly by the individual, and/or HUD system users.

EXEMPTION FROM CERTAIN PROVISION OF THE ACT:

None.

[FR Doc. E9–20405 Filed 8–24–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

National Park Service

30-day Notice of Intention To Request Clearance of Collection of Information; Opportunity for Public Comment

AGENCY: National Park Service, Interior.

ACTION: Notice and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 and 5 CFR part 1320, Reporting and Recordkeeping Requirements, the National Park Service (NPS) invites public comments on an extension of a currently approved collection of information (OMB #1024–0226).

DATES: Public comments on this Information Collection Request (ICR) will be accepted on or before September 24, 2009.

ADDRESSES: You may submit comments directly to the Desk Officer for the Department of the Interior (OMB #1024–0226), Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), by fax at 202/395–5806, or by electronic mail at *oira_docket@omb.eop.gov.* Please also mail or hand carry a copy of your comments to Charlie Stockman, Outdoor Recreation Planner, Rivers, Trails and Conservation Assistance Program, National Park Service, 1201 Eye Street, NW., flr 9, Washington, DC 20005 or via fax at 202/371–5179.

FOR FURTHER INFORMATION CONTACT: Charlie Stockman, Outdoor Recreation Planner, Rivers, Trails and Conservation Assistance Program, National Park Service, 1201 Eye Street, NW., flr 9, Washington, DC 20005 or via fax at 202/371–5179. You are entitled to a copy of the entire ICR package free-of-charge. You may access this ICR at *http://www.reginfo.gov/public/.*

Comments Received on the 60–Day Federal Register Notice: The NPS published a 60-day notice to solicit public comments on this ICR in the **Federal Register** on April 7, 2009 (74 FR 15742). The comment period closed on June 8, 2009. No comments were received on this notice.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 1024–0226.

Title: National Park Service Partnership Satisfaction Surveys.

Form(s): None.

Type of Request: Extension of a currently approved collection of information.

Description of Need: The Government Performance and Results Act requires Federal agencies to prepare annual performance reports documenting the progress made toward achieving long-term goals. The National Park Service needs the information in the proposed collections to assess the annual progress being made toward meeting Long-term Goal IIIb2 of the National Park Service Strategic Plan. Goal IIIb2 performance target is 95% of communities served are satisfied with NPS partnership assistance in providing recreation and conservation benefits on lands and waters. The information sought is not collected elsewhere by the Federal Government. The proposed information collections impose no data collection or record keeping burden on the potential respondents. Responses to the surveys are voluntary and are based on data that the respondents already collect and/or personal opinion. The National Park Service needs this information to help evaluate and improve its partnership assistance programs. NPS' Rivers, Trails and Conservation Assistance Program (RTCA) and Federal Lands to Parks (FLP) Program will conduct surveys to assess client satisfaction with the services received and to identify needed program improvements. The NPS conducts these surveys to identify areas of strengths and weaknesses in its recreation and conservation assistance programs, to provide an information base for improving those programs, and to provide a required performance measurement (Goal IIIb2 of the National Park Service Strategic Plan) under the Government Performance and Results Act.

Affected public: 180 surveys to private sector and public sector contacts for RTCA and 75 surveys for FLP. A total of 255 surveys to be sent in 2010 and 255 surveys to be sent in 2012.

Obligation to respond: Voluntary.

Frequency of response: Biennial.

Estimated total annual responses: 150.

Estimated average completion time per response: 10 minutes.

Estimated annual reporting burden: 26 hours.

Estimated annual nonhour cost burden: $0.

Comments are invited on: (1) The practical utility of the information being gathered; (2) the accuracy of the burden hour estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that OMB will be able to do so.

Dated: August 20, 2009.

Cartina Miller,

NPS Information Collection Clearance Officer.

[FR Doc. E9–20436 Filed 8–24–09; 8:45 am]

BILLING CODE 4310–EM–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Boundary Revision: Catoctin Mountain Park

AGENCY: National Park Service, Department of the Interior.

ACTION: Notification of Boundary Revision.

SUMMARY: Notice is hereby given that the boundary of Catoctin Mountain Park in Frederick County, Maryland is modified to include one tract of land adjacent to the park. This revision is made to include privately owned property that the National Park Service wishes to acquire. The National Park Service has determined that inclusion of the tract within the park's boundary will make significant contributions to the purposes for which the park was established. After the United States' acquisition of the tract, the National Park Service will manage the property in accordance with applicable law.

FOR FURTHER INFORMATION CONTACT: National Park Service, Mel Poole, Superintendent, Catoctin Mountain Park, 6602 Foxville Road, Thurmont, Maryland 21788–1598.

DATES: The effective date of this boundary revision is the date of publication in the **Federal Register**.

SUPPLEMENTARY INFORMATION: Executive Order 7496, dated November 14, 1936, transferred all the real property acquired by the former Resettlement Administration, which included the former Catoctin Recreational Demonstration Area, to the Secretary of the Interior (Secretary), and authorized the Secretary, through the National Park Service, to administer the projects transferred by the aforementioned Executive Order. Section 7(c) of the Land and Water Conservation Fund Act, as amended, authorizes minor boundary revisions to areas within the National Park System after advising the House Committee on Natural Resources and the Senate Committee on Energy and Natural Resources of the proposed boundary amendment. The Committees were notified July 8, 2009. This action will add one tract comprising 63.8 acres of land, more or less, to Catoctin Mountain Park. The acquisition of this tract is intended to enhance the park's natural and ecological integrity and provide for greater recreational opportunities. The tract is identified as Parcels 96 and 243 on Frederick County, Maryland, Tax Map 6. The referenced tract is depicted on Catoctin Mountain Park land acquisition status map segment 01, having drawing number 841/92,001. This map is on file at the National Park Service, Land Resources Program Center, National Capital Region, and at the Office of the Superintendent, Catoctin Mountain Park.

Note: When contacting this office or any government office, before including your address, phone number, e-mail address or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: *July 17, 2009.*

Margaret O'Dell,

Regional Director, National Capital Region.

[FR Doc. E9–20434 Filed 8–24–09; 8:45 am]

BILLING CODE 4312–59–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of Draft Director's Order Concerning National Park Service Policies and Procedures Governing its Public Risk Management Program

AGENCY: National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: The National Park Service (NPS) is proposing to adopt a Director's Order setting forth the policies and

procedures under which NPS facilities will develop and implement Public Risk Management Program. The Director's Order will help park staff do what is possible consistent with the NPS Organic Act and other applicable laws to prevent visitor injuries. It is also important that staff understand and communicate, when possible, that visitors are responsible for their own safety when they come to enjoy parks.

DATES: Written comments will be accepted until September 24, 2009.

ADDRESSES: Draft Director's Order #50C is available on the Internet at *http://www.nps.gov/policy/DO–50Cdraft.htm.* Requests for copies of, and written comments on, the Director's Order should be sent to Sara Newman, Public Risk Management Program Director, Risk Management Division, 1201 Eye Street, NW., Washington, DC 20005, or to her Internet address: *sara_newman@nps.gov.*

FOR FURTHER INFORMATION CONTACT: Sara Newman at (202) 513–7225.

SUPPLEMENTARY INFORMATION: When the NPS adopts documents containing new policy or procedural requirements that may affect parties outside the NPS, the documents are first made available for public review and comment before being adopted. The draft Director's Order covers topics such as the elements, principles, and responsibilities of staff for carrying out a public risk management program.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: July 21, 2009.

Karen Taylor-Goodrich,

Associate Director, Visitor and Resource Protection.

[FR Doc. E9–20433 Filed 8–24–09; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF INTERIOR

National Park Service

Warner Valley Comprehensive Site Plan; Lassen Volcanic National Park, Plumas County, CA; Notice of Availability of Draft Environmental Impact Statement

Summary: Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 81–190 as amended), the National Park Service (NPS), Department of Interior, has prepared a Draft Environmental Impact Statement (DEIS) for the Warner Valley Comprehensive Site Plan. This conservation planning effort has four main objectives: (1) Improving visitor experience and enhancing public safety through improvements to infrastructure and relocating infrastructure so it is less visible; (2) Ecological restoration of Warner Valley fen and wetland areas; (3) Removal or repair of Dream Lake Dam and restoration of associated riparian/wetland complex; (4) Protect and enhance the Drakesbad Historic District through removal of non-contributing structures and functions. The DEIS evaluates alternative methods for accomplishing ecological restoration and cultural resource protection; appropriate mitigation measures are incorporated, and an ''environmentally preferred'' course of action is identified. The two ''action'' alternatives are based upon information gained during extensive public scoping, and adhere to 2006 Management Policies and applicable laws.

Background: Warner Valley is located in the south central part of the Lassen Volcanic National Park and encompasses a 400-acre project planning area. The Warner Valley area includes Dream Lake Dam, built in 1932 by Alex Sifford and which impounds an approximately 2.7 acre lake. The center of the valley features a large meadow that contains one of the largest known fens in the Sierra Nevada and Cascade mountains. The upper valley area was originally developed for cattle ranching in the late 1800's by E.R. Drake, who initiated efforts to ditch and dry out the wet meadow to improve the grazing for cattle. In 1900, Mr. Drake sold Warner Valley to the Sifford family who focused on developing a summer guest ranch for the next 50 years. The Siffords built the 10 historic structures which now form the core of Drakesbad Guest Ranch Historic District (both Dream Lake and the meadow are contributing features). This transformed the overnight accommodations from tent camping near hot springs into a guest ranch. The Siffords also developed or improved trails, created a hot spring fed pool, constructed corrals, dewatered the meadow, and built the dam to enhance recreational opportunities for their guests. In 1958 the guest ranch and land were sold to the NPS; the Guest Ranch continues today as a concession operated by California Guest Services.

The current Drakesbad wetland conditions include a fen which is drying out and ceasing to function as a fen, and Dream Lake which has submersed a natural wetland. The Historic District has accumulated with features and structures which diminishes its historic character. Lack of clearly demarcated parking impacts natural resources by allowing car traffic to encroach in sensitve areas. Hikers traveling the Pacific Crest Trail must walk on the unimproved Warner Valley Road, which also bifurcates the nearby campground.

Range of Alternatives: This DEIS describes and analyzes a No Action alternative (Alternative 1, which would continue current management practices) and two ''action'' alternatives. Alternatives 2 and 3 contain a varying mix of three major components: (1) Improving visitor experience and safety through improving or relocating non-contributing infrastructure so it has less impact on visitor experience and historic district qualities; (2) ecological restoration of wetlands including Drakesbad fen, the larger Warner Valley fen wetland, and Dream Lake riparian/wetland complex; (3) Protect and enhance the Historic District by removing non-contributing structures and functions. Both of the ''action'' alternatives include the following ''common'' elements:

- Move concession employee housing, storage, generator, and propane tanks out of the Historic District and into a new service area.
- Create a Pacific Crest Trail connection so hikers may avoid using the Warner Valley road.
- Renovate and slightly expand the non-historic bathhouse adjacent to the swimming pool.
- Reduce parking sprawl by replacing inadequate wheel stops.
- Minor changes to the campground and fee station location, including relocation of the day use/trailhead parking from a meadow to the campground.

Alternative 2 (agency-preferred) components include:

- Ecological restoration of Warner Valley fen through permanently filling ditches with appropriate soil and native material.
- Creating a concession housing and service center outside of the Historic

District composed of tent cabins surrounding a single-story bathroom building.

• Removal of Dream Lake Dam and allowing the area to revert to a riparian/wetland complex.

Alternative 3 includes:

• Restoration of Warner Valley fen through selective damming of ditches.

• Creating a concession housing and service center outside the Drakesbad Historic District composed of a two-story dormitory building with bathrooms.

• Reconstruct Dream Lake Dam to Bureau of Reclamation engineering standards.

Scoping and Public Involvement: A preliminary scoping effort for the Warner Valley comprehensive plan was initiated on June 1, 2004, with posting of a request at the Drakesbad Guest Ranch Lodge for comments about potential future management options for the upper valley area. Public meetings for the Warner Valley Comprehensive Site Plan were held during June 13–15, 2005, in Red Bluff, Chester, and Vacaville. Meeting announcements were printed in the Red Bluff Daily News, Chester Progressive, Redding Record Searchlight, and the Sacramento Bee (20 additional media outlets, including newspaper, radio stations, and television stations were also notified). The formal scoping phase was initiated on June 24, 2005, with publication in the **Federal Register** of the Notice of Intent to prepare an EIS. Approximately 700 public scoping announcements were distributed including details of date, time, and location of the public open houses. These outreach activities elicited information from individuals, agencies, and organizations which aided the alternatives formulation and environmental impact analysis processes.

Previously, public scoping meetings were held for the Dream Lake Dam Management Plan during November 4–7, 2002, in the Chico, Red Bluff, Redding, and Chester. The same media outlets mentioned above were notified. Formal public scoping for the original Dream Lake Dam Management Plan was initiated on April 4, 2003, with publication of a Notice of Intent to prepare an EIS in the **Federal Register**. This initial conservation planning effort was expanded into the broader Warner Valley Comprehensive Site Plan as it became apparent that separate planning projects would be more time consuming to accomplish. All comments obtained throughout the extended scoping effort have been fully considered in preparing this DEIS.

Comments: The DEIS will be sent to affected Federal, Tribal, State, and local government agencies, to interested parties, and all those requesting copies (specify compact disc or paper format). The document will be available at park headquarters and at local public libraries, and will also be posted on the Lassen Volcanic National Park Web site (*http://www.nps.gov/lavo*) and on the NPS Planning, Environment and Public Comment Web site (*http://parkplanning.nps.gov/lavo*). All written comments must be postmarked or transmitted not later than November 21, 2009. Periodically updated project information will be announced via regional and local press media and posted on the project Web sites.

Written comments may be submitted by letter to Lassen Volcanic National Park, Warner Valley DEIS, P.O. Box 100, Mineral, CA 96063 (or may be transmitted electronically to *http://parkplanning.nps.gov/lavo*). Public meetings will be hosted in Chester, Anderson and Vacaville during September 2–9, 2009; details including time and location will be posted on the Lassen Volcanic National Park Web site (*see* above). Questions regarding status of project planning may be directed to Sean Eagan (530.595.4444 ext 5176 or via e-mail *sean_eagan@nps.gov*).

All comments are maintained in the project's administrative record and will be available for public review at Lassen Volcanic National Park Headquarters. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comments to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Decision Process: Following careful analysis of all comments as may be forthcoming in response to the DEIS, at this time it is anticipated that the Final EIS would be completed in November 2009. The availability of the final document will be similarly announced in the **Federal Register**, and also publicized via local and regional press media, direct mailings, and Web site postings. No sooner than thirty days after the distribution of the Final EIS a Record of Decision may be executed. As a delegated EIS the approving official responsible for the final decision is the Regional Director, Pacific West Region. Subsequently, the official responsible for implementing the approved Comprehensive Site Plan will be the Superintendent, Lassen Volcanic National Park.

Dated: May 13, 2009.

Jonathan B. Jarvis,

Regional Director, Pacific West Region.

[FR Doc. E9–20437 Filed 8–24–09; 8:45 am]

BILLING CODE 4312–60–P

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan; City of Rocks National Reserve, Cassia County, ID; Notice of Intent to Prepare an Environmental Impact Statement

SUMMARY: In accordance with § 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*), the National Park Service (NPS) is undertaking a conservation planning and environmental impact analysis process for creating a new General Management Plan (GMP) for City of Rocks National Reserve (Reserve), Idaho. A Land Protection Plan would accompany the GMP and provide priorities for both cultural and natural resource protection needs. The Land Protection Plan is particularly needed to guide future land acquisition strategies for this unit of the National Park System due to the complex ownership of private, state, and federal land. The GMP is intended to serve as a ''blueprint'' to guide management of natural and cultural resources and visitor use during the next 15–20 years. One or more development concept plans, which guide more detailed, site-specific preservation and development, may also be included with the GMP. Consistent with NPS Planning Program Standards, the new GMP will: (1) Describe the Reserve's purpose, significance, and primary interpretive themes; (2) identify the fundamental resources and values of the Reserve, its other important resources and values, and describe the condition of these resources; (3) describe desired conditions for cultural and natural resources and visitor experiences throughout the Reserve; (4) develop management zoning to support these desired conditions; (5) develop alternative applications of these management zones to the Reserve's landscape (i.e. zoning alternatives); (6) address user capacity; (7) analyze potential boundary modifications; (8) ensure that management recommendations are developed in consultation with interested stakeholders and the public and adopted by NPS leadership after an adequate analysis of the benefits,

environmental impacts, and economic costs of alternative courses of action; (9) develop cost estimates implementing each of the alternatives; and (10) identify and prioritize subsequent detailed studies, plans and actions that may be needed to implement the updated GMP.

Scoping Process: The purpose of this scoping outreach effort is to elicit early public feedback regarding issues and concerns, nature and extent of potential environmental impacts (and appropriate mitigations), and GMP alternatives which should be addressed in the preparing the EIS. Through the outreach activities planned during the scoping phase, the NPS will compile suggestions from the public regarding resource protection, visitor use, and land management—questions to be posed will include: (1) What is most valued about City of Rocks National Reserve? (2) What are the important issues facing the Reserve? (3) Imagining a visit to City of Rocks National Reserve 20 years from now, describe what you would like to experience. (4) Do the purpose and significance statements capture the essence of City of Rocks National Reserve?

All scoping comments must be postmarked or transmitted not later that November 15, 2009. Comments may be transmitted electronically through the NPS Planning, Environment, and Public Comment Web site *http://parkplanning.nps.gov/ciro*. If it is more convenient, written comments may be sent to: General Management Plan, Attn: Wallace Keck, Superintendent, City of Rocks National Monument, P.O. Box 169, Almo, Idaho 83312. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Beginning in mid-September, a series of public meetings will be hosted in Almo, Burley, Pocatello, Boise, and Ketchem, Idaho. Detailed information including dates, times, and specific locations for these meetings will be posted on the GMP Web site at *http://www.nps.gov/ciro/parkmgmt/plan.htm*. All attendees will be given the opportunity to ask questions and provide comments to the planning team. The GMP Web site will provide the most up-to-date information regarding the project, including project description, planning process updates, meeting notices, reports and documents, and useful links associated with the project.

SUPPLEMENTARY INFORMATION: The Reserve was established in 1988 and is operating with an outdated 1994 comprehensive management plan (CMP). Production of a new GMP to replace the CMP is required by Cooperative Agreement between the National Park Service and Idaho Parks and Recreation Department, as well as a joint 2009 Operation Plan and Guidelines for Management of the Reserve. Major changes have occurred in NPS management, policy, land ownership, and practices that directly affect the Reserve. The preliminary spectrum of issues to be addressed in the GMP are as follows:

Cultural Resource Protection and Preservation: The Reserve was established ''to preserve and protect the significant historical and cultural resources'' related to the California Trail which passed through the City of Rocks between 1843–1882. These resources include emigrant inscriptions, trail ruts, and landscape characteristics that contributed to prominence of City of Rocks along the trail. The Reserve also manages other cultural resources related to Native Americans in the area before the California Trail era, and homesteading and ranching which post-date the California Trail. These resources include archeological sites, remnants of homesteads, as well as archival and museum objects. The GMP will explore various preservation treatment options, management strategies, and design guidelines for the protection of a wide variety of cultural resources. Some cultural sites, such as Boise-Kelton Stage Station, are located on private land within the Reserve and contain important historic remnants of the California Trail or homesteading period. Managing cultural resources on both private and public land presents challenges, such as protection from vandalism, weathering, and impacts from visitor use and livestock grazing.

Natural Resource Protection: The Reserve is home to a diversity of plant and animal life, as well as the dramatic granite rock formations. Invasive species, visitor activities, and grazing can impact these resources. The GMP will explore management needed for natural resource protection. In addition, the GMP will re-evaluate management of the City of Rocks Research Natural Area (RNA), status which was inherited from the BLM and USFS when the Reserve was established. This 312-acre area within the Reserve was designated for its outstanding natural features, natural processes, natural diversity, and ecological values. It contains unique geologic formations and the northern limit of the pinyon-juniper forest type in North America. As part of the GMP process, current status of RNA resources will be reviewed, and a determination will be made as to which recreational uses, if any, might be appropriate within the RNA, whether the RNA designation should remain, and whether other areas of the Reserve with biological diversity should be considered for such designation.

Soundscape/Natural Quiet: Natural sounds are a fundamental resource of the Reserve, once referred to as the ''Silent City of Rocks''. Military and commercial overflights, especially at night, have an impact on both visitor experience and wildlife. Reserve operations and visitor activities can also contribute to the deterioration of the natural soundscape. Baseline acoustical monitoring has recently been conducted to measure and record the sounds of the Reserve. The GMP will present recommendations to maintain natural sounds and natural quiet.

Air Quality and Night Skies: Air quality in and around southern Idaho is some of the most pristine in the nation, but it has shown steady deterioration over the last ten years. Pristine airsheds are a fundamental resource of the Reserve and visitor surveys indicate that air quality and scenic vistas are among the most highly valued characteristics of the Reserve. Southern Idaho is also one of the best places in the U.S. for viewing night skies. The GMP will evaluate ways to protect viewsheds, particularly vistas associated with the California National Historic Trail that bisects the Reserve, and to protect the night sky in and around the Reserve.

Climate Change: The potential effects of global climate change may include changes in temperature, precipitation, evaporation and snowpack rate, local weather patterns, wildfire frequency, and plant communities. Planning and management actions will allow the Reserve to minimize its greenhouse gas emissions, adapt to climate change, and interpret changing conditions. The GMP will provide guidance on how the Reserve will assess, respond to, and interpret the impacts of global climate change on resources.

Operations/Facilities: The Reserve has an on-going need for staffing, funding, and facilities. The visitor center proposed in the 1994 CMP has yet to be constructed on leased BLM land near the Almo entrance into the Reserve—an opportunity exists to develop an interagency visitor center that would

meet needs of the Reserve, the adjacent Castle Rocks State Park, and neighboring land managing agencies. Also, there are insufficient employee housing options on either Reserve administered land or in the local community. The GMP will guide planning for these facilities.

Visitor Experience: Visitors come to the Reserve to enjoy the scenery, and to climb, hike, and recreate in other ways. Visitation to the Reserve is increasing, and the demographics of visitors are trending to younger adult visitors (25–35 years) and smaller group sizes. As the visiting population shifts, their interests and preferred activities may also change. The GMP will use current visitor survey data to comprehensively address available visitor facilities, activities, and programs. Day use and camping will be evaluated taking into consideration camping opportunities on adjacent public and private lands. A comprehensive look at the trail system with associated parking, picnicking, and trailheads will be completed as part of the GMP. The GMP will also provide guidance on other recreational uses, such as hunting and equestrian use, including locating staging areas and any related facilities.

Evaluation of Boundaries: The National Parks and Recreation Act of 1978, as amended, requires that GMPs consider adequacy of existing boundaries. When the Reserve was established, it was assumed that the private lands and associated ranching within the boundary would remain part of the Reserve. Since then, many of the landowners have opted to sell their land to the NPS. Planning for these acquired lands will be addressed in the GMP. The GMP will also determine if any changes to the boundary are appropriate based on resource protection, visitor use, and land management needs. National Historic Landmark and National Natural Landmark boundaries that overlay the Reserve are configured differently from each other and neither covers the entire Reserve. Also, the Cassia County Historic Preservation Zone does not cover the entire Reserve, and therefore may not fully protect the cultural and natural resources and presents some management challenges. The GMP will consider recommendations for these boundaries so that they might be consistent with the extent of the Reserve boundary.

Transportation/Circulation: Access and transportation within and through the Reserve includes motorized use and people on foot, horses, and bicycles. Parking is available in both day use and overnight camping areas, but overflow parking often takes place on roadsides, creating safety concerns and causing erosion. Staging areas for equestrian use have similar issues. Some visitors merely pass through the Reserve on scenic drives along the City of Rocks road. City of Rocks Backcountry Byway is an unpaved road that runs through the Reserve; this route also has erosion issues, due to seasonal weather conditions and alignment on disintegrating granite soils. The road is currently managed by Cassia County, which poses some challenges for Reserve staff when maintenance is needed. The GMP will recommend appropriate road maintenance standards, including identifying appropriate practices for drainage and erosion control along the Byway. The GMP will also examine an array of potential management options for the City of Rocks Backcountry Byway, and consider all forms of motorized and non-motorized transportation and evaluate circulation patterns, parking, and other transportation options.

Decision Process: Upon conclusion of the scoping phase and following due consideration of public concerns and comments from other agencies, a Draft EIS\GMP will be prepared and released for public review. Availability of the forthcoming Draft EIS for public review and written comment will be formally announced in the **Federal Register**, as well as through local and regional news media, direct mailing to the project mailing list, and via the Internet. Following careful consideration of all agency and public comment as may be received, a Final EIS will be prepared; at this time it is anticipated that the final plan will be available in 2013. As a delegated EIS, the official responsible for the final decision on the proposed plan is the Regional Director, Pacific West Region, National Park Service. Subsequently, the official responsible for implementation of the approved GMP would be the Superintendent, City of Rocks National Reserve.

Dated: July 13, 2009.

Patricia L. Neubacher,

Acting Regional Director, Pacific West Region.

[FR Doc. E9–20438 Filed 8–24–09; 8:45 am]

BILLING CODE 4312–DB–P

DEPARTMENT OF THE INTERIOR

National Park Service

New Merced Wild and Scenic River Comprehensive Management Plan; Yosemite National Park; Madera and Mariposa Counties, CA; Notice of Extension of Public Scoping Period for Environmental Impact Statement

SUMMARY: Pursuant to § 102(2)(c) of the National Environmental Policy Act of 1969 (Pub. L. 91–190 as amended), the National Park Service, Department of the Interior, will prepare a Draft Environmental Impact Statement (DEIS) for a Comprehensive Management Plan which will guide future management of the Merced River corridor in Yosemite National Park during the next 10–15 years. The Notice of Intent to prepare the EIS was published in the **Federal Register** on June 30, 2009 (with a 60-day public scoping period originally set to conclude on August 29, 2009). In deference to general public interest expressed to date by interested individuals, local entities, and concerned organizations, the scoping period has been extended.

SUPPLEMENTARY INFORMATION: Any individual, organization, agency, or other interested parties are encouraged to provide written comments—any further responses must now be postmarked or transmitted no later than December 4, 2009. Comments already provided in response to the June 30, 2009 Notice of Intent need not be resubmitted. All written responses should be addressed to the Superintendent, Attn: Merced River Plan, P.O. Box 577, Yosemite National Park, CA 95389, or may be sent via the Internet to *yose_planning@nps.gov* or submitted via FAX to (209) 379–1294. Before including your address, phone number, e-mail address, or other personal identifying information, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public meetings originally planned to be hosted during late July and August will be rescheduled for September–October. To request meeting details (pending confirmation) or to be included on the Comprehensive Management Plan mailing list, contact the park at the address or e-mail noted above, or via telephone at (209) 379–1365.

Dated: July 22, 2009.

George J. Turnbull,

Acting Regional Director, Pacific West Region.

[FR Doc. E9–20435 Filed 8–24–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT926000–09–L19100000–BJ0000–LRCM08RS3469]

Filing of Plat of Survey—Montana

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice of Filing of Plat of Survey.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Montana State Office, Billings, Montana, (30) days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Marvin Montoya, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669, telephone (406) 896–5124 or (406) 896–5009.

SUPPLEMENTARY INFORMATION: This survey was executed at the request of the Bureau of Indian Affairs, Rocky Mountain Region, Billings, Montana, and was necessary to determine Individual and Tribal Trust lands.

The lands we surveyed are:

Principal Meridian, Montana

T. 27 N., R. 47 E.

The plat, in 1 sheet, representing the dependent resurvey of a portion of the 11th Guide Meridian East, the adjusted original meanders of the former left bank of the Missouri River, downstream, through section 31, the corrective dependent resurvey of the E–W center line of section 31, the dependent resurvey of a portion of the subdivision of section 31, a certain division of accretion line, and the subdivision of section 31, and the survey of the meanders of the present left bank of the Missouri River, downstream, through a portion of section 31, the meanders of the left bank of a relicted channel of the Missouri River, downstream, through section 31, the medial line of a relicted channel of the Missouri River, downstream, through section 31, and a certain division of accretion and partition line, Township 27 North, Range 47 East, Principal Meridian, Montana, was accepted August 13, 2009.We will place a copy of the plat, in 1 sheet, and related field notes we described in the open files. They will be available to the public as a matter of information. If BLM receives a protest against this survey, as shown on this plat, in 1 sheet, prior to the date of the official filing, we will stay the filing pending our consideration of the protest. We will not officially file this plat, in 1 sheet, until the day after we have accepted or dismissed all protests and they have become final, including decisions or appeals.

Dated: August 18, 2009.

Michael T. Birtles,

Chief Cadastral Surveyor, Division of Resources.

[FR Doc. E9–20375 Filed 8–24–09; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Repatriate Cultural Items: Milwaukee Public Museum, Milwaukee, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the Milwaukee Public Museum, Milwaukee, WI, that meets the definitions of ''sacred object'' or ''objects of cultural patrimony'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

The three cultural items are one catlinite tube pipe (MPM A14350/3639), one woven bag with water serpent motif (MPM E3170/14), and one wooden bowl with handles (MPM E56211/17617). The three cultural items are affiliated with the Ottawa tribe (also known as the Odawa) of Michigan. All cultural items were acquired in Michigan in an area long associated with the Odawa. It would be unlikely that other tribes may claim these cultural items since the associated geographical area makes a strong case for affiliation. The three items are associated with the categories in which they are claimed by the Little Traverse Bay Band of Odawa Indians, Michigan.

The pipe is claimed as a sacred object. In 1913, the pipe was donated to the museum by George West, collector and Milwaukee Public Museum trustee. It was collected by Walter P. Wyman who obtained it in Emmet County, MI. It was found ''by an Indian in 1900 in the field on the lake bank of L'Arbor Croche.'' Pipes are considered to be sacred objects by Odawa religious leaders.

The bag is claimed as an object of cultural patrimony. In 1905, the museum purchased the cultural item from Mrs. Wilkinson of Beloit, WI. In August 1889, the cultural item was collected by George Wilkinson at Cross Village, MI, from Mrs. Shartleff. The museum documentation states that the bag was given to Mrs. Shartleff's father by an Indian princess in 1770. The bag is considered to be an object of cultural patrimony since it would have been used in ceremonies to protect the Odawa tribe, as a whole. Furthermore, this bag could not have been alienated by a single individual since its particular use was for the benefit of the entire tribe.

The bowl is claimed as an object of cultural patrimony. In 1956, the bowl was purchased by the museum from the Logan Museum of Anthropology, Beloit College, WI. It was originally part of the Albert Green Heath Collection. Heath was an avid collector of Native American material. According to the Logan Museum records, the bowl was collected from Aniquam at Cross Village, MI. The Odawa traditionally had three types of wooden bowls: personal bowls, community bowls, and ceremonial bowls. This bowl is considered to be a communal bowl that is owned by the entire tribe. The bowl is used for special ceremonies and is believed by the Odawa to contain *manidok* (spirits) that are members of the community that help the Odawa maintain their cultural beliefs and traditions.

Officials of the Milwaukee Public Museum have determined that, pursuant to 25 U.S.C. 3001 (3)(C), the one cultural item described above is a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Milwaukee Public Museum also have determined that, pursuant to 25 U.S.C. 3001 (3)(D), the two cultural items described above have ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual. Lastly, officials of the Milwaukee Public Museum have determined that, pursuant to 25 U.S.C.

3001 (2), there is a relationship of shared group identity that can be reasonably traced between the sacred object and objects of cultural patrimony and the Little Traverse Bay Bands of Odawa Indians, Michigan.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the sacred object and objects of cultural patrimony should contact Dawn Scher Thomae, Milwaukee Public Museum, 800 W. Wells St., Milwaukee, WI 53233, telephone (414) 278–6157, before September 24, 2009. Repatriation of the sacred object and objects of cultural patrimony to the Little Traverse Bay Bands of Odawa Indians, Michigan may proceed after that date if no additional claimants come forward.

The Milwaukee Public Museum is responsible for notifying the Little Traverse Bay Bands of Odawa Indians, Michigan that this notice has been published.

Dated: August 12, 2009

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E9–20484 Filed 8–24–09; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: Milwaukee Public Museum, Milwaukee, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the Milwaukee Public Museum, Milwaukee, WI, that meet the definition of ''objects of cultural patrimony'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

The four cultural items are one bird amulet (MPM T415), one pouch (MPM E59237/20077), one woven mat (MPM E30899/7431), and one wool bag (E30902/7431).

In 1987, the bird amulet was found during an inventory. At the time, it lacked a catalog number. Based on similar items documented in museum collections, it is most likely part of a medicine, war or other ceremonial bundle, and was most likely separated from its bundle over time.

In 1966, the pouch was found in storage. At the time, it lacked a catalog number. Based on similar items documented in museum collections, it is most likely part of a war bundle, and was most likely separated from its bundle over time.

In 1922, the mat was given to the Milwaukee Public Museum in an exchange with the Field Museum of Natural History, Chicago, IL (original Field Museum number is 59088). It was collected in Oklahoma by anthropologist George A. Dorsey. Dr. Dorsey categorized this cultural item as a ''feast mat''. There is no additional information about the cultural item in the Field Museum records. The size and design of the mat indicates that it is for ritual or ceremonial use.

In 1922, the bag was given to the Milwaukee Public Museum in an exchange with the Field Museum (original Field Museum number is 59233). It was collected in Oklahoma by Dr. Dorsey. There is no additional information about the cultural item in the Field Museum records. According to leading Osage expert John Nunley in his book, *Art of the Osage*, ''Only women who had been initiated into the clan priesthood wove these kinds of bags. The bags were intended to be vessels containing the ritual fees paid by initiates seeking advancement in the priesthood.''

A determination of Osage tribal affiliation with the bird amulet and pouch can be made, based on geographic affiliation, type of material and museum documentation. A determination of Osage tribal affiliation with the mat and bag can also be made as the Field Museum records identify these types of items as Osage, and the cultural items in question were obtained directly from Dr. Dorsey, who collected the items directly from the tribe. Furthermore, based on consultation with tribal representatives, all the cultural items described above were and are of cultural importance to the Osage Nation, and could not have been alienated by any single individual. Based on museum records, similarity to other objects, and consultation evidence, the four cultural items are reasonably believed to be objects of cultural patrimony.

Officials of the Milwaukee Public Museum have determined that, pursuant to 25 U.S.C. 3001 (3)(D), the four cultural items described above have ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual. Officials of the Milwaukee Public Museum also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the objects of cultural patrimony and the Osage Nation, Oklahoma.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the objects of cultural patrimony should contact Dawn Scher Thomae, Milwaukee Public Museum, 800 W. Wells St., Milwaukee, WI 53233, telephone (414) 278–6157, before September 24, 2009. Repatriation of the objects of cultural patrimony to the Osage Nation, Oklahoma may proceed after that date if no additional claimants come forward.

The Milwaukee Public Museum is responsible for notifying the Osage Nation, Oklahoma that this notice has been published.

Dated: August 12, 2009

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E9–20482 Filed 8–24–09; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: The Public Museum, Grand Rapids, MI

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of The Public Museum, Grand Rapids, MI, that meet the definition of ''unassociated funerary objects'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the unassociated funerary objects was made by The Public Museum's professional staff in consultation with the Santa

Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California.

In 1909, The Public Museum purchased three cultural items from Dr. J.W. Velie. The donor's records stated that the cultural items had been removed from burial mounds in the Santa Barbara vicinity, CA. Any human remains that may have been removed from the burial mounds were not part of the 1909 Velie acquisition. The three unassociated funerary objects are two steatite stone bowls and one stone mortar.

Museum documentation indicates that the cultural items were recovered from graves, and the types of items are consistent with other funerary objects found in the Santa Barbara area during the occupation of the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California.

Officials of The Public Museum have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the three cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from specific burial sites of Native American individuals. Officials of The Public Museum also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Marilyn Merdzinski, Director of Collections and Preservation, The Public Museum, 272 Pearl St. NW., Grand Rapids, MI 49504, telephone (616) 456–3521, before September 24, 2009. Repatriation of the unassociated funerary objects to the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California may proceed after that date if no additional claimants come forward.

The Public Museum is responsible for notifying the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California that this notice has been published.

Dated: July 9, 2009

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E9–20488 Filed 8–24–09; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Detroit Institute of Arts, Detroit, MI

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Detroit Institute of Arts, Detroit, MI. The human remains were removed from either the city of Detroit or the surrounding area of Detroit, MI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the Detroit Institute of Arts professional staff in consultation with representatives of the Little Traverse Bay Bands of Odawa Indians, Michigan.

Sometime prior to 1972, human remains representing, at minimum, 10 individuals were removed from private property within either Detroit or in the surrounding area outside of Detroit, MI. In 1989, the box containing 143 human bones was discovered during an inventory of the collections at the Detroit Institute of Arts. An accompanying note read ''NA Indian bones, Mich.'' The museum determined that the handwriting on the note belonged to a curator, now deceased, who had been employed at the museum between 1939 and 1972. Museum officials concluded that, sometime prior to 1972, these human remains had been transferred to the museum by a Detroit-area resident who had discovered them locally and on private property. No known individuals were identified. No associated funerary objects are present.

Osteological examination of the human remains by Wayne State University concluded that the human remains were, more likely than not, Native American and from a prehistoric date. Officials of the Detroit Institute of Arts have determined that given the totality of circumstances surrounding the acquisition of the human remains, there is insufficient evidence to determine by a reasonable belief, the cultural affiliation to any present-day Indian tribe.

Officials of the Detroit Institute of Arts have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of 10 individuals of Native American ancestry. Officials of the Detroit Institute of Arts also have determined that, pursuant to 25 U.S.C. 3001 (2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.

The Native American Graves Protection and Repatriation Review Committee (Review Committee) is responsible for recommending specific actions for disposition of culturally unidentifiable human remains. In 2008, officials of the Detroit Institute of Arts requested the disposition of the culturally unidentifiable human remains to the Bay Mills Indian Community, Michigan; Keweenaw Bay Indian Community, Michigan; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Saginaw Chippewa Indian Tribe of Michigan; and Sault Ste. Marie Tribe of Chippewa Indians of Michigan, as more likely than not, aboriginal occupants of the land of present-day Detroit. The Review Committee considered the request at its October 11–12, 2008 meeting and recommended disposition of the human remains to the Bay Mills Indian Community, Michigan; Keweenaw Bay Indian Community, Michigan; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Saginaw Chippewa Indian Tribe of Michigan; and Sault Ste. Marie Tribe of Chippewa Indians of Michigan. An April 3, 2009, letter from the Designated Federal Officer on behalf of the Secretary of Interior transmitted the authorization for the museum to effect disposition of the human remains of the 10 culturally unidentifiable individuals to the Indian tribes listed above contingent on the publication of a Notice of Inventory Completion in the **Federal Register**. This notice fulfills that requirement.

Representatives of any other Indian tribe that believes itself to be culturally

affiliated with the human remains should contact David Penney, Vice President of Exhibitions and Collection Strategies, Detroit Institute of Arts, 5200 Woodward Avenue, Detroit, MI 48202, telephone (313) 833–1432, before September 24, 2009. Disposition of the human remains to the Bay Mills Indian Community, Michigan; Keweenaw Bay Indian Community, Michigan; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Saginaw Chippewa Indian Tribe of Michigan; and Sault Ste. Marie Tribe of Chippewa Indians of Michigan may proceed after that date if no additional claimants come forward.

The Detroit Institute of Arts is responsible for notifying the Bay Mills Indian Community, Michigan; Keweenaw Bay Indian Community, Michigan; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Saginaw Chippewa Indian Tribe of Michigan; and Sault Ste. Marie Tribe of Chippewa Indians of Michigan that this notice has been published.

Dated: August 11, 2009

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E9–20486 Filed 8–24–09; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAK910000 L13100000.DB0000 LXSINSSI0000]

Notice of Public Meeting, North Slope Science Initiative—Science Technical Advisory Panel

AGENCY: Bureau of Land Management, Alaska State Office, North Slope Science Initiative, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, North Slope Science Initiative (NSSI)—Science Technical Advisory Panel (STAP) will meet as indicated below:

DATES: The meeting will be held September 9 and 10, 2009, in Fairbanks, Alaska. On September 9, 2009, the meeting will begin at 9 a.m., at the National Park Service, Fairbanks Headquarters, 4175 Geist Road. Public comments will begin at 3 p.m. On September 10, 2009, the meeting will begin at 9 a.m. at the same location, and will adjourn at 4 p.m.

FOR FURTHER INFORMATION CONTACT: John F. Payne, PhD, Executive Director, North Slope Science Initiative (910), c/o Bureau of Land Management, 222 W. Seventh Avenue, #13, Anchorage, AK 99513, (907) 271–3431 or e-mail *john_f_payne@blm.gov.*

SUPPLEMENTARY INFORMATION: The NSSI—STAP provides advice and recommendations to the NSSI Oversight Group regarding priority needs for management decisions across the North Slope of Alaska. These priority needs may include recommendations on inventory, monitoring, and research activities that contribute to informed land management decisions. The topics to be discussed at the meeting include:

- Emerging Issues Summary from the STAP;
- Update on the Water Parameters Measurement Project;
- Update on the Project Tracking System and Database;
- NSSI priority issues and projects;
- Other topics the Oversight Group or STAP may raise.

All meetings are open to the public. The public may present written comments to the Science Technical Advisory Panel through the Executive Director, North Slope Science Initiative. Each formal meeting will also have time allotted for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, transportation, or other reasonable accommodations, should contact the Executive Director, North Slope Science Initiative.

Before including your address, phone number, e-mail address, or other personal indentifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: August 19, 2009.

Julia Dougan,

Acting Alaska State Director.

[FR Doc. E9–20388 Filed 8–24–09; 8:45 am]

BILLING CODE 1310–JA–P

DEPARTMENT OF THE INTERIOR

National Park Service

Cedar Creek and Belle Grove National Historical Park Advisory Commission; Notice of Public Meetings

AGENCY: Department of the Interior, National Park Service, Cedar Creek and Belle Grove National Historical Park Advisory Commission.

ACTION: Notice of meetings.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act that meetings of the Cedar Creek and Belle Grove National Historical Park Advisory Commission will be held to discuss the development and implementation of the Park's general management plan.

Date: September 17, 2009.

Location: Middletown Town Council Chambers, 7875 Church Street, Middletown, VA.

Date: December 17, 2009.

Location: Warren County Government Center, 220 North Commerce Avenue, Front Royal, VA.

Date: March 18, 2010.

Location: Strasburg Town Hall Council Chambers, 174 East King Street, Strasburg, VA.

Date: June 17, 2010.

Location: Middletown Town Council Chambers, 7875 Church Street, Middletown, VA. All meetings will convene at 8:30 a.m. and are open to the public.

FOR FURTHER INFORMATION, CONTACT: Diann Jacox, Superintendent, Cedar Creek and Belle Grove National Historical Park, (540) 868–9176.

SUPPLEMENTARY INFORMATION: Topics to be discussed at the meetings include: Review of draft general management plan, land protection planning, historic preservation, visitor interpretation, election of a commission chair, and new commission members.

The Park Advisory Commission was designated by Congress to advise on the preparation and implementation of the park's general management plan. Individuals who are interested in the Park, the development and implementation of the plan, or the business of the Advisory Commission are encouraged to attend the meetings.

Dated: August 13, 2009.

Diann Jacox,

Superintendent, Cedar Creek and Belle Grove National Historical Park.

[FR Doc. E9–20432 Filed 8–24–09; 8:45 am]

BILLING CODE 4310–AR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Privacy Act of 1974; Amendments to Existing Systems of Records

AGENCY: Minerals Management Service, Interior.

ACTION: Proposed amendment of existing Privacy Act systems of records.

SUMMARY: In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), the Minerals Management Service of the Department of the Interior is issuing public notice of its intent to amend 7 existing Privacy Act system of records notices to add a new routine use to authorize the disclosure of records to individuals involved in responding to a breach of Federal data.

DATES: Comments must be received by October 5, 2009.

ADDRESSES: Any persons interested in commenting on these proposed amendments may do so by submitting comments in writing to the Minerals Management Service Privacy Act Officer, Deborah Kimball, Minerals Management Service, U.S. Department of the Interior, 381 Elden St., MS2200, Herndon, VA 20170, or by e-mail to *Deborah.Kimball@mms.gov*.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service Privacy Act Officer, Deborah Kimball, Minerals Management Service, U.S. Department of the Interior, 381 Elden St., MS2200, Herndon, VA 20170, or by e-mail to *Deborah.Kimball@mms.gov*.

SUPPLEMENTARY INFORMATION: On May 22, 2007, in a memorandum for the heads of Executive Departments and Agencies entitled ''Safeguarding Against and Responding to the Breach of Personally Identifiable Information,'' the Office of Management and Budget directed agencies to develop and publish a routine use for disclosure of information in connection with response and remedial efforts in the event of a data breach. This routine use will serve to protect the interest of the individuals, whose information is at issue by allowing agencies to take appropriate steps to facilitate a timely and effective response to the breach, thereby improving its ability to prevent, minimize or remedy any harm resulting from a compromise of data maintained in its systems of records. Accordingly, the Minerals Management Service of the Department of the Interior is proposing to add a new routine use to authorize disclosure to appropriate agencies, entities, and persons, of information maintained in the following systems in the event of a data breach. These amendments will be effective as proposed at the end of the comment period unless comments are received which would require a contrary determination. The Minerals Management Service will publish a revised notice if changes are made based upon a review of comments received.

Dated: July 29. 2009.

Deborah Kimball,

Minerals Management Service.

SYSTEM NAMES:

INTERIOR/MMS–2

SYSTEM NAME:

Personal Property Accountability Records

FR Doc. 53 FR 38086; Filed 09–29–88

INTERIOR/MMS–3

SYSTEM NAME:

Accident Reports and Investigations

FR Doc. 53 FR 38087; Filed 09–29–88

INTERIOR/MMS–4

SYSTEM NAME:

Personnel Security System

FR Doc. 54 FR 41879; Filed 10–12–89

INTERIOR/MMS–5

SYSTEM NAME:

Telephone/Employee Locator system

FR Doc. 52 FR 8976; Filed 03–20–87

INTERIOR/MMS–8

ADVANCED BUDGET/ACCOUNTING CONTROL AND INFORMATION SYSTEM

FR Doc. 99–3932 Filed 2–17–99

INTERIOR/MMS–9

SYSTEM NAME:

Employee Counseling Services Program

FR Doc. 51 FR 13100; Filed 04–17–86

INTERIOR/MMS–12

SYSTEM NAME:

Lessee/Operator Training Files

FR Doc. 54 FR 41880; Filed 10–12–89

NEW ROUTINE USE:

Disclosures outside the Department of the Interior may be made:

To appropriate agencies, entities, and persons when:

(a) It is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; and

(b) The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interest, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and

(c) The disclosure is made to such agencies, entities and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

[FR Doc. E9–20423 Filed 8–24–09; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

Notice is hereby given that on August 18, 2009, a proposed Consent Decree in *United States* v. *Cooper Land Development,* (W.D. Mo.), No. 08–0709–CV–W–SOW, was lodged with the United States Court for the Western District of Missouri.

In this action, the United States sought the penalties and injunctive relief pursuant to sections 301 and 309 of the Clean Water Act, 33 U.S.C. 1311, 1319, against Cooper Land Development (''Cooper''). The Complaint alleged that Cooper violated its National Pollution Discharge Elimination System (''NPDES'') storm water permits at two residential construction sites in Daniels, West Virginia and Raymore, Missouri.

Pursuant to the proposed Consent Decree, the Settling Defendants will pay to the United States $513,740 in penalties for the violations alleged in the Complaint. Cooper will also undertake injunctive measures aimed at improving its compliance with storm water requirements and NPDES permits at its residential construction sites.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Cooper Land Development,*

(W.D. Mo.) No. 08–0709–CV–W–SOW, D.J. Ref. 90–5–1–1–09005.

During the public comment period, the Consent Decree may be examined at the Office of the United States Attorney, Western District of Missouri, Charles Evans Whittaker Courthouse, 400 East Ninth Street, Room 5510, Kansas City, Missouri 64106. The Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $26.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section.

[FR Doc. E9–20383 Filed 8–24–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

August 19, 2009.

The Department of Labor (DOL) hereby announces the submission of the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number)/e-mail: *DOL_PRA_PUBLIC@dol.gov.*

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor—ETA, Office of Management and Budget, Room 10235, Washington, DC 20503, *Telephone:* 202–395–7316/*Fax:* 202–395–5806 (these are not toll-free numbers), *E-mail: OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register.** In order to ensure the appropriate consideration, comments should reference the OMB Control Number (*see* below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Employment and Training Administration.

Type of Review: Extension without change of a currently approved collection.

Title of Collection: Forms for Agricultural Recruitment System Affecting Migratory Farm Workers.

OMB Control Number: 1205–0134.

Agency Form Numbers: ETA–790 and ETA–795.

Affected Public: Private Sector.

Total Estimated Number of Respondents: 8,356.

Total Estimated Annual Burden Hours: 8,606.

Total Estimated Annual Costs Burden (does not include hour costs): $29,471.

Description: Employers and farm labor contractors complete forms ETA–790 (the Agricultural and Food Processing Clearance Order) and ETA–795 (the Agricultural Food and Food Processing Clearance Memorandum) to recruit agricultural workers in compliance with the regulations at 20 CFR 653.500. These same forms are also used by State Workforce Agencies and One-Stop Career Centers to recruit workers from outside the local commuting area. For additional information, see related notice published at Volume 74 FR 7077 on February 12, 2009.

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. E9–20326 Filed 8–24–09; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,571]

Interdent Service Corporation; Stockton, CA; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated in response to a petition filed on July 7, 2009 by a company official on behalf of workers of InteDent Service Corporation, Stockton, California.

The petitioning group of workers is covered by an earlier petition (TA–W–71,328) filed on June 22, 2009 that is the subject of an ongoing investigation for which a determination has not yet been issued. Further investigation in this case would duplicate efforts and serve no purpose; therefore the investigation under this petition has been terminated.

Signed at Washington, DC, this 6th day of August 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–20466 Filed 8–24–09; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the

destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before September 24, 2009. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means:

Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001.

E-mail: request.schedule@nara.gov.

FAX: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Laurence Brewer, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. *Telephone:* 301–837–1539. *E-mail: records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless specified otherwise. An item in a schedule is media neutral when the disposition instructions may be applied to records regardless of the medium in which the records are created and maintained. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (*See* 36 CFR 1228.24(b)(3).)

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of the Army, Agency-wide (N1–AU–09–11, 1 item, 1 temporary item). Master files of an electronic information system that contains Training and Doctrine Command budget control and reconciliation data.

2. Department of Commerce, Bureau of the Census (N1–29–09–1, 1 item, 1 temporary item). Questionnaires containing responses to a survey of Compact of Free Association migrants conducted for the Department of the Interior in 2008.

3. Department of Defense, Army and Air Force Exchange Service (N1–334–09–2, 3 items, 3 temporary items). Reports of serious incidents relating to agency assets, property, or employees.

4. Department of Defense, Army and Air Force Exchange Service (N1–334–09–3, 3 items, 3 temporary items). Records relating to criminal investigations, including reports, interview records, and recommendations for actions to prevent recurrence.

5. Department of Defense, Army and Air Force Exchange Service (N1–334–09–4, 3 items, 3 temporary items). Records relating to investigations of losses resulting from robberies, fraud, and other felonies and misdemeanors.

6. Department of Defense, Joint Staff (N1–218–09–4, 1 item, 1 temporary item). Master files of an electronic information system that contains vulnerability assessment data and is used to identify, track, prioritize, and manage vulnerabilities.

7. Department of Defense, Joint Staff (N1–218–09–5, 1 item, 1 temporary item). Master files of an electronic information system that contains information relating to combating terrorism, including reports, publications, instructions, and training information. This system also allows users to take part in discussion forums.

8. Department of Health and Human Services, Food and Drug Administration (N1–88–09–6, 16 items, 16 temporary items). Records of the Center for Food Safety and Applied Nutrition, including such files as pre-market and post-market notifications for new dietary supplements, background documentation pertaining to the development and amendment of food standards, records relating to color additive certification, records relating to milk regulatory activities, master data files and final reports from the Food Label and Package Survey, and master data files accumulated in connection with the voluntary registration of cosmetics.

9. Department of Homeland Security, Immigration and Customs Enforcement (N1–567–09–2, 3 items, 3 temporary items). Master files and outputs associated with an electronic information system that contains data concerning students in law enforcement training courses.

10. Department of Homeland Security, Immigration and Customs Enforcement (N1–567–09–3, 2 items, 2 temporary items). Master files associated with an electronic information system used to analyze trade and financial data in connection with investigations of money laundering, smuggling, trade

fraud, and other crimes relating to import and export.

11. Department of Justice, Office of the Inspector General (N1–60–09–25, 8 items, 5 temporary items). Audit and evaluation working files, investigation files lacking in historical value, and follow-up records. Proposed for permanent retention are final audit and evaluation reports. Investigation files that pertain to significant cases were previously approved for permanent retention.

12. Department of Justice, Federal Bureau of Investigation (N1–65–09–16, 5 items, 4 temporary items). Data contained in an electronic information system used to track terrorist threats that are not actionable. Also included are system outputs, audit files, and related records. Proposed for permanent retention are master files that contain data that is actionable.

13. Department of Justice, National Drug Intelligence Center (N1–523–09–2, 1 item, 1 temporary item). Master files of an electronic information system that contains intelligence data relating to illegal drug manufacturing, trafficking, and related activities.

14. Department of State, Bureau of Consular Affairs (N1–59–09–22, 2 items, 2 temporary items). Records relating to consular notifications and access for foreign nationals arrested in the United States. Also included are notification documents received in error from law enforcement agencies.

15. Department of Transportation, Federal Aviation Administration (N1–237–09–2, 2 items, 2 temporary items). Master files associated with an electronic information system used to manage flight inspection operations. Also included are paper copies of daily flight logs, which are input into the system.

16. Department of Transportation, Federal Aviation Administration (N1–237–09–3, 2 items, 2 temporary items). Master files associated with an electronic information system used to track maintenance of aircraft owned and operated by the agency for flight inspection missions.

17. Department of Transportation, Federal Aviation Administration (N1–237–09–4, 4 items, 4 temporary items). Records relating to fuel expenses for agency aircraft. Included are such records as receipts and invoices, reports on fuel usage, and master files associated with an electronic information system used for reconciling fuel expenses.

18. Department of Transportation, Federal Aviation Administration (N1–237–09–5, 1 item, 1 temporary item). Master files of an electronic information system used to maintain information relating to the results of flight inspections.

19. Department of the Treasury, Internal Revenue Service (N1–58–09–31, 1 item, 1 temporary item). Forms used on a quarterly basis to document managerial awareness of security procedures.

20. Department of the Treasury, Internal Revenue Service (N1–58–09–32, 3 items, 3 temporary items). Master files and outputs associated with an electronic information system used as a project management tool in connection with transitioning new or modified systems from the developing organization to the organization receiving them.

21. Environmental Protection Agency, Office of Air and Radiation (N1–412–07–59, 13 items, 7 temporary items). Nonconforming motor vehicle case files; air quality management plans maintained regionally; chlorofluorocarbon certificates and registrations; certification records; Ann Arbor recall and in-use testing records, data records, and address correspondence file; and emission factor program test records. Paper copies of these files were previously approved for disposal. Proposed for permanent retention are State, Tribal and Federal implementation plans, State and local agency air monitoring files, and State inspection and maintenance program records, for which paper copies were previously approved as permanent.

Dated: August 19, 2009.

Michael J. Kurtz,

Assistant Archivist for Records Services—Washington, DC.

[FR Doc. E9–20569 Filed 8–24–09; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Senior Executive Service (SES) Performance Review Board; Members

AGENCY: National Archives and Records Administration.

ACTION: Notice; SES Performance Review Board.

SUMMARY: Notice is hereby given of the appointment of members of the National Archives and Records Administration (NARA) Performance Review Board.

DATES: *Effective Date:* This appointment is effective on August 25, 2009.

FOR FURTHER INFORMATION CONTACT: Steven G. Rappold, Human Resources Services Division (NAH), National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740–6001, (301) 837–2084.

SUPPLEMENTARY INFORMATION: Section 4314(c) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES Performance Review Boards. The Board shall review the initial appraisal of a senior executive's performance by the supervisor and recommend final action to the appointing authority regarding matters related to senior executive performance.

The members of the Performance Review Board for the National Archives and Records Administration are: Michael J. Kurtz, Assistant Archivist for Records Services—Washington, DC, Thomas E. Mills, Assistant Archivist for Regional Records Services, and Martha A. Morphy, Assistant Archivist for Information Services. These appointments supersede all previous appointments.

Dated: August 20, 2009.

Adrienne C. Thomas,

Acting Archivist of the United States.

[FR Doc. E9–20570 Filed 8–24–09; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Delegation of Authority

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: Notice is hereby given of the order of succession in the absence of the Chairman for the National Endowment for the Arts.

DATES: Upon publication.

FOR FURTHER INFORMATION CONTACT: Craig McCord, Director of Human Resources, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Room 627, Washington, DC 20506, (202) 682–5473.

In the absence of the Chairman, those listed below are designated to exercise the duties of Chairman:

Senior Deputy Chairman, or if the incumbent is unavailable,

Deputy Chairman for Management and Budget, or if the incumbent is unavailable,

Deputy Chairman for Grants and Awards, or if the incumbent is unavailable,

Deputy Chairman for State, Regions, and Local Arts Agencies, or if the incumbent is unavailable,

Director of the Office of Government Affairs, or if the incumbent is unavailable.

This delegation will remain in effect until revoked or otherwise superseded.

Kathleen Edwards,

Director of Administrative Services, National Endowment for the Arts.

[FR Doc. E9–20426 Filed 8–24–09; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0363]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from July 30, 2009 to August 12, 2009. The last biweekly notice was published on August 11, 2009 (74 FR 40233).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking and Directives Branch (RDB), TWB–05–B01M, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be faxed to the RDB at 301–492–3446. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to

matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 2007 (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the petitioner/requestor should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html.* Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.*

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory e-filing system may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC electronic filing Help Desk, which is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays. The toll-free help line number is 1–866–672–7640. A person filing electronically may also seek assistance by sending an e-mail to the NRC electronic filing Help Desk at *MSHD.Resource@nrc.gov.*

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the request and/or petition should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp,* unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submissions.

For further details with respect to this license amendment application, *see* the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly

available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

Entergy Gulf States Louisiana, LLC, and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: June 29, 2009.

Description of amendment request: The proposed amendment would revise the requirements in Technical Specification (TS) 5.5.6, ''Inservice Testing Program.'' TS 5.5.6 currently contains references to the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code), Section XI as the source of requirements for the inservice testing (IST) of ASME Code Class 1, 2, and 3 pumps and valves. The proposed changes would delete the references to Section Xl of the ASME Code and incorporate references to the ASME Code for Operation and Maintenance of Nuclear Power Plants (ASME OM Code). In addition, the proposed amendment would address the applicability of Surveillance Requirement 3.0.2 to other normal and accelerated frequencies as 2 years or less in the IST program. These changes are consistent with changes identified in the Improved Standard Technical Specifications (ISTS) by Technical Specification Task Force Traveler (TSTF) Nos. 479 and 497.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises the Technical Specification Inservice Testing Program for consistency with the requirements of 10 CFR 50.55a(f)(4) for pumps and valves which are classified as American Society of Mechanical Engineers (ASME) Code Class 1, Class 2 and Class 3. The proposed change incorporates revisions to the ASME Code that result in a net improvement in the measures for testing pumps and valves.

The proposed changes revise TS 5.5.6 for RBS to conform to the requirements of 10 CFR 50.55a(f) regarding the IST of pumps and valves for the third 10-Year Interval. The current TS reference the ASME Boiler and Pressure Vessel Code, Section XI, requirements for the IST of ASME Code Class 1, 2, and 3 pumps and valves. The proposed changes would reference the ASME OM Code instead. This is consistent with 10 CFR 50.55a(f). The proposed changes are administrative in nature.

The proposed change does not impact any accident initiators or analyzed events or assumed mitigation of accident or transient events. They do not involve the addition or removal of any equipment, or any design changes to the facility.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change revises the Technical Specification Inservice Testing Program for consistency with the requirements of 10 CFR 50.55a(f)(4) for pumps and valves which are classified as ASME Code Class 1, Class 2 and Class 3. The proposed change incorporates revisions to the ASME Code that result in a net improvement in the measures for testing pumps and valves.

The proposed TS changes do not involve physical changes to the facility. In addition, the proposed changes have no affect on plant configuration, or method of operation of plant structures, systems, or components.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change revises the Technical Specification Inservice Testing Program for consistency with the requirements of 10 CFR 50.55a(f)(4) for pumps and valves which are classified as ASME Code Class 1, Class 2 and Class 3. The proposed change incorporates revisions to the ASME Code that result in a net improvement in the measures for testing pumps and valves.

The change does not involve a physical change to the plant or a change in the manner in which the plant is operated or controlled. The IST of the Class 1, 2, and 3 pumps and valves continue to meet the appropriate requirements.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Terence A. Burke, Associate General Counsel—Nuclear Entergy Services, Inc., 1340 Echelon Parkway, Jackson, Mississippi 39213.

NRC Branch Chief: Michael T. Markley.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment request: July 3, 2009.

Description of amendment request: The proposed amendments would revise the operability requirements and actions in Technical Specification (TS) 3.4.15, ''RCS [Reactor Coolant System] Leakage Detection Instrumentation,'' and the associated Bases Section to reflect the revised TSs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change reduces the time allowed for the plant to operate when the only Technical Specification (TS) 3.4.15 operable Reactor Coolant System (RCS) leakage instrumentation monitor is the containment atmosphere gaseous radioactivity monitor, and revises the basis for operability for the containment sump monitors, containment atmosphere particulate radioactivity monitor, containment atmosphere gaseous radioactivity monitor, and the containment fan cooler unit condensate collection monitor. The proposed change increases the allowed operating time when all RCS leakage detection system instrumentation is inoperable. The proposed change also removes the word ''required'' from TS 3.4.15 Condition A, Required Action A.2, Condition B, and Required Action B.2, revises TS 3.4.15 Condition A to apply to any containment sump monitor, and revises the name of the containment fan cooler unit (CFCU) condensate collection monitor in the TS 3.4.15 Actions. The monitoring of RCS leakage is not a precursor to any accident previously evaluated. The monitoring of RCS leakage is not used to mitigate the consequences of any accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration of the plant or the addition of new or different type of

equipment. The change does not involve a change in how the plant is operated.

Therefore, the proposed change does not create the possibility of a new or different accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The change that reduces the allowed time of operation with only the least accurate containment atmosphere gaseous radiation monitor operable increases the margin of safety by increasing the likelihood that an increase in RCS leakage will be detected before it potentially results in gross failure. For the change that allows a limited period of time to restore at least one RCS leakage detection monitor to operable status when all leakage detection monitors are inoperable, two sources of diverse leakage detection capability are required to be provided during the limited period. Allowing a limited period of time to restore at least one RCS leakage detection instrument to operable status before requiring a plant shutdown avoids the situation of putting the plant through a thermal transient without RCS leakage monitoring. The change to TS 3.4.15 Condition A, Required Action A.2, Condition B, Required Action B.2, Condition C, and Required Action C.2.2 is consistent with TS [Limiting Condition for Operation] 3.4.15 and does not impact the RCS leakage instrumentation. The revision to the TS bases for operability of the RCS leakage instrumentation monitors does not involve a change in the leakage instrumentation and is consistent with the original design of the leakage instrumentation.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Jennifer Post, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Branch Chief: Michael T. Markley.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: April 9, 2009.

Description of amendment request: The proposed amendment would relocate Technical Specification (TS) requirements pertaining to communications during refueling operations (TS 3/4.9.5), manipulator crane operability (TS 3/4.9.6), and crane travel (TS 3/4.9.7) to the Technical Requirements Manual.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The staff's review is presented below.

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment would relocate TS requirements to the Technical Requirements Manual (TRM) which is a licensee-controlled document. The TS requirements to be relocated relate to control room communications during refueling, operability of the manipulator crane and auxiliary hoist for movement of control rods or fuel assemblies within the reactor pressure vessel, and control of heavy loads over fuel assemblies in the fuel storage pool. Once relocated, any future changes would be controlled by 10 CFR 50.59. The proposed amendment is administrative in nature from the standpoint that the current TS requirements would be relocated verbatim to the TRM. There are no physical plant modifications associated with this change. The proposed amendment would not alter the way any structure, system, or component (SSC) functions and would not alter the way the plant is operated. As such, the proposed amendment would have no impact on the ability of the affected SSCs to either preclude or mitigate an accident. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment would not change the design function or operation of the SSCs involved and would not impact the way the plant is operated. As such, the proposed change would not introduce any new failure mechanisms, malfunctions, or accident initiators not already considered in the design and licensing bases. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The margin of safety is associated with the confidence in the ability of the fission product barriers (*i.e.,* fuel cladding, reactor coolant pressure boundary, and containment structure) to limit the level of radiation to the public. There are no physical plant modifications associated with the proposed amendment. The proposed amendment would not alter the way any SSC functions and would not alter the way the plant is operated. The proposed amendment would not introduce any new uncertainties or change any existing uncertainties associated with any safety limit. The proposed amendment would have no impact on the structural integrity of the fuel cladding, reactor coolant pressure boundary, or containment structure. Based on the above considerations, the NRC staff concludes that the proposed amendment would not degrade the confidence in the ability of the fission product barriers to limit the level of radiation to the public. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Branch Chief: Harold K. Chernoff.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: February 3, 2009.

Description of amendment request: The proposed amendment would revise the Operating Licenses to deviate from certain South Texas Project Fire Protection Program requirements. The amendment will allow the performance of operator manual actions to achieve and maintain safe shutdown in the event of a fire in lieu of meeting circuit separation protection requirements of Title 10 of the *Code of Federal Regulations* (10 CFR), Part 50, Appendix R, Section III.G.2 for Fire Area 31.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The design functions of structures, systems and component[s] are not impacted by the proposed change. The proposed change involves operator manual actions in response to a fire and will not initiate an event. The proposed actions do not increase the probability of occurrence of a fire or any other accident previously evaluated.

The proposed actions are feasible and reliable and demonstrate that the unit can be safely shutdown in the event of a fire. No significant consequences result from the performance of the proposed actions.

Therefore, the proposed change does not involve a significant increase in the

probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The design functions of structures, systems and component[s] are not impacted by the proposed amendment. The proposed change involves operator manual actions in response to a fire. They do not involve new failure mechanisms or malfunctions that can initiate a new accident.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Adequate time is available to perform the proposed operator manual actions to account for uncertainties in estimates of the time available and in estimates of how long it takes to diagnose and execute the actions. The actions are straightforward and do not create any significant concerns. The actions have been verified that they can be performed through demonstration and they are proceduralized. The proposed actions are feasible and reliable and demonstrate that the unit can be safely shutdown in the event of a fire.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendment involves no significant hazards consideration.

Attorney for licensee: A. H. Gutterman, Esq., Morgan, Lewis & Bockius, 1111 Pennsylvania Avenue, NW., Washington, DC 20004.

NRC Branch Chief: Michael T. Markley.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: March 3, 2009.

Description of amendment request: The proposed change would revise the Operating Licenses to deviate from certain South Texas Project Fire Protection Program requirements. The amendment will allow the performance of operator manual actions to achieve and maintain safe shutdown in the event of a fire in lieu of meeting circuit separation protection requirements of Title 10 of the *Code of Federal Regulations* (10 CFR), Part 50, Appendix R, Section III.G.2 for Fire Area 27.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The design functions of structures, systems and components are not impacted by the proposed change. The proposed change involves operator manual actions in response to a fire, and will not initiate an event. The proposed actions do not increase the probability of occurrence of a fire or any other accident previously evaluated.

The proposed actions are feasible and reliable and demonstrate that the unit can be safely shutdown in the event of a fire. No significant consequences result from the performance of the proposed actions.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The design functions of structures, systems and components are not impacted by the proposed amendment. The proposed change involves operator manual actions in response to a fire. They do not involve new failure mechanisms or malfunctions that can initiate a new accident.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant rendition in a margin of safety?

Response: No.

Adequate time is available to perform the proposed operator manual actions to account for uncertainties in estimates of the time available and in estimates of how long it takes to diagnose and execute the actions. The actions are straightforward and do not create any significant concerns. The actions have been verified that they can be performed through demonstration and they are proceduralized. The proposed actions are feasible and reliable and demonstrate that the unit can be safely shutdown in the event of a fare.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendment involves no significant hazards consideration.

Attorney for licensee: A. H. Gutterman, Esq., Morgan, Lewis & Bockius, 1111 Pennsylvania Avenue, NW., Washington, DC 20004.

NRC Branch Chief: Michael T. Markley.

Tennessee Valley Authority, Docket No. 50 390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of amendment request: July 9, 2009.

Description of amendment request: The proposed amendment would allow use of a dedicated on-line core power distribution monitoring system (PDMS) to enhance surveillance of core thermal limits and would revise Technical Specification (TS) TS 1.1, ''Definitions,'' TS 3.1.8, ''Rod Position Indication,'' TS 3.2.1, ''Heat Flux Hot Channel Factor,'' TS 3.2.4, ''Quadrant Power Tilt Ratio (QPTR)'', and TS 3.3.1, ''Reactor Trip System (RTS) Instrumentation.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The Power Distribution Monitoring System (PDMS) performs essentially continuous core power distribution monitoring with data input from existing plant instrumentation. This system utilizes an NRC-approved Westinghouse proprietary computer code, *i.e.* Best Estimate Analyzer for Core Operations—Nuclear (BEACON), to provide data reduction for incore flux maps, core parameter analysis, load follow, operation simulation, and core prediction. The PDMS does not provide any protection or control system function. Fission product barriers are not impacted by these proposed changes. The proposed changes occurring with PDMS will not result in any additional challenges to plant equipment that could increase the probability of any previously evaluated accident. The changes associated with the PDMS do not affect plant systems such that their function in the control of radiological consequences is adversely affected. These proposed changes will, therefore, not affect the mitigation of the radiological consequences of any accident described in the Updated Final Safety Analysis Report (UFSAR).

Use of the PDMS supports maintaining the core power distribution within required limits. Further, continuous on-line monitoring through the use of PDMS provides significantly more information about the power distributions present in the core than is currently available. This result in more time (*i.e.* earlier determination of an adverse condition developing) for operator action prior to having an adverse condition develop that could lead to an accident condition or to unfavorable initial conditions for an accident.

Therefore, the proposed change does not involve a significant increase in the

probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Other than use of the PDMS to monitor core power distribution, implementation of the PDMS and associated Technical Specification changes has no impact on plant operations or safety, nor does it contribute in any way to the probability or consequences of an accident. No safety related equipment, safety function, or plant operation will be altered as a result of this proposed change. The possibility for a new or different type of accident from any accident previously evaluated is not created since the changes associated with implementation of the PDMS do not result in a change to the design basis of any plant component or system. The evaluation of the effects of using the PDMS to monitor core power distribution parameters shows that all design standards and applicable safety criteria limits are met.

The proposed changes do not result in any event previously deemed incredible being made credible. Implementation of the PDMS will not result in any additional adverse condition and will not result in any increase in the challenges to safety systems. The cycle specific variables required by the PDMS are calculated using NRC approved methods. The Technical Specifications will continue to require operation within the required core operating limits, and appropriate actions will continue to be taken when or if limits are exceeded.

Therefore, the proposed change does not create the possibility of a new or different kind of an accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

No margin of safety is adversely affected by the implementation of the PDMS. The margins of safety provided by current Technical Specification requirements and limits remain unchanged, as the Technical Specifications will continue to require operation within the core limits that are based on NRC approved reload design methodologies. Appropriate measures exist to control the values of these cycle specific limits, and appropriate actions will continue to be specified and taken for when limits are violated. Such actions remain unchanged.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Branch Chief: L. Raghavan.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of amendment request: March 20, 2009.

Description of amendment request: The proposed amendment would revise the Operating License No. NPF–30 for Callaway Plant, Unit 1, in order to incorporate a change to Technical Specification (TS) 5.5.16, ''Containment Leakage Rate Testing Program,'' which establishes the program for leakage rate testing of the containment, as required by Title 10 of Code of Federal Regulations (10 CFR) Section 50.54, ''Conditions of licenses,'' Subsection (o) and 10 CFR 50, Appendix J, ''Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors,'' Option B, ''Performance Based Requirements,'' as modified by approved exemptions. Specifically, the TS 5.5.16 would be revised to reflect a one-time 5-year deferral of the containment Type A integrated leak rate test (ILRT) from once in 10 years to once in 15 years.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

The proposed change will revise Callaway Plant TS 5.5.16, ''Containment Leakage Rate Testing Program,'' to reflect a one-time, five-year extension for the containment Type A test date to enable the implementation of a 15-year test interval. While the containment is designed to contain radioactive material that may be released from the reactor core following a design basis Loss-of-Coolant Accident (LOCA), the test interval associated with Type A testing is part of ensuring the plant's ability to mitigate the consequences of accidents described in the FSAR [Final Safety Analysis Report] and does not involve a precursor or initiator of any accident previously evaluated. Thus, the proposed change to the Type A test interval cannot increase the probability of an accident previously evaluated in the FSAR.

Type A testing does provide assurance that the containment will not exceed allowable leakage rate criteria specified in the TS and will continue to perform its design function following an accident. However, per NUREG–1493, ''Performance-Based Containment Leak-Test Program,'' Type A tests identify only a few potential leakage paths that cannot be identified by Type B and C testing. The current Type B and C penetration test frequencies for Callaway are established based on performance, using the requirements of 10 CFR 50, Appendix J, Option B, and the Type B and C testing requirements will not be changed as a result of the proposed license amendment. As a result, with respect to the consequences of an accident, a risk assessment of the proposed change has concluded that there is an insignificant increase in total population dose rate and an insignificant increase in the conditional containment failure probability.

Based on the above, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No

The proposed change is for a one-time, five-year extension of the Type A test for Callaway Plant and will not affect the control parameters governing unit operation or the response of plant equipment to transient or accident conditions. The proposed change does not introduce new equipment, modes of system operation, or failure mechanisms.

Therefore, based on the above, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No

The Callaway Plant containment consists of the concrete containment building, its steel liner, and the penetrations through this structure. The structure is designed to contain radioactive material that may be released from the reactor core following a design basis LOCA. Additionally, this structure provides shielding from the fission products that may be present in the containment atmosphere following accident conditions.

The containment is a prestressed, reinforced concrete, cylindrical structure with a hemispherical dome and a reinforced concrete base slab. The inside structure is lined with a carbon steel liner to ensure a high degree of leak tightness during operating and accident conditions. A post-tensioning system is used to prestress the cylindrical shell and dome.

The concrete containment building is required for structural integrity of the containment under Design Basis Accident (DBA) conditions. The steel liner and its penetrations establish the leakage-limiting boundary of the containment. Maintaining operability of the containment will limit leakage of fission product radioactivity released from the containment to the environment.

The integrity of the containment penetrations and isolation valves is verified through Type B and Type C local leak rate tests (LLRTs) and the overall leak tight integrity of the containment is verified by an ILRT, as required by 10 CFR 50, Appendix J, ''Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors.''

The existing 10-year interval at Callaway Plant is based on past performance. Previous Type A tests conducted at Callaway Plant

indicate that leakage from containment has been less than all 10 CFR 50 Appendix J, Option B, leakage limits.

The proposed change for a one-time extension of the Type A test does not affect the method for Type A, B, or C testing or the test acceptance criteria. Type B and C testing will continue to be performed at the frequency required by Callaway Plant Technical Specifications. The containment inspections that are performed in accordance with the requirements of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code, Section XI, ''Inservice Inspection,'' and 10 CFR 50.65, ''Requirements for Monitoring the Effectiveness of Maintenance at Nuclear Power Plants,'' provide a high degree of a assurance that the containment will not degrade in a manner that is only detectable by Type A testing.

In NUREG–1493, ''Performance-Based Containment Leak-Test Program,'' the NRC indicated that a 20-year extension for Type A testing resulted in an imperceptible increase in risk to the public. The NUREG–1493 study also concluded that, generically, the design containment leak rate contributes a very small amount to the individual risk and that the decrease in Type A testing frequency would have a minimal affect on this risk. AmerenUE has conducted risk assessments to determine the impact of a one-time change to the Callaway Plant Type A test schedule from a baseline value of once in 10 years to once in 15 years for the risk measures of Large Early Release Frequency (LERF), Total Population Dose, and Conditional Containment Failure Probability (CCFP). The results of the risk assessments indicate that the proposed change to the Callaway Plant Type A test schedule has a minimal impact on public risk.

Based on the above and on previous Type A test results for the Callaway Plant containment, the current containment surveillance program, and the results of the AmerenUE risk assessment, there is no reduction in the effectiveness of the Callaway Plant containment as a barrier to the release of the post-accident containment atmosphere to the public or to personnel in the Control Room. Thus, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John O'Neill, Esq., Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street, NW., Washington, DC 20037.

NRC Branch Chief: Michael T. Markley.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of amendment request: May 4, 2009.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3.7.3, ''Main Feedwater Isolation Valves (MFIVs) and Main Feedwater Regulating Valves (MFRVs), and Main Feedwater Regulating Valve Bypass Valves (MFRVBVs),'' so that the limiting condition for operation (LCO) and Applicability more accurately reflect the conditions for when the LCO should be applicable and more effectively provide appropriate exceptions to the Applicability for certain valve configurations. The amendment would incorporate other minor changes; the title to TS 3.7.3 and the header for each TS page would be revised, and the exception footnotes in TS Table 3.3.2–1 of TS 3.3.2, ''ESFAS [Engineered Safety Features Actuation System] Instrumentation,'' would be revised to improve the application of existing notes and/or incorporate more appropriate notes as applicable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

The proposed changes do not alter any design or operating limits, nor do they physically alter safety-related systems, nor do they affect the way in which safety-related systems perform their functions. The proposed changes do not change accident initiators or precursors assumed or postulated in the FSAR [Final Safety Analysis Report]-described accident analyses, nor do they alter the design assumptions, conditions, and configuration of the facility or the manner in which the plant is normally operated and maintained. The proposed changes do not alter or prevent the ability of structures, systems, and components (SSCs) from performing their intended functions to mitigate the consequences of an initiating event within the assumed acceptance limits. With specific regard to the proposed TS changes, although the changes involve the exceptions contained in the Applicability of TS 3.7.3 as well as the notes attached to TS Table 3.3.2–1 (which are themselves exceptions), the provisions of the exceptions and notes would continue to be based on the premise that adequate isolation or isolation capability exists for the main feedwater lines, *i.e.*, that the required safety function is performed or capable of being performed as required or assumed for mitigation of the applicable postulated accidents.

All accident analysis acceptance criteria will therefore continue to be met with the proposed changes. The proposed changes will not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. The proposed changes will not alter any assumptions or change any mitigation actions in the radiological consequence evaluations in the FSAR. The applicable radiological dose acceptance criteria will continue to be met. Overall protection system performance will remain within the bounds of the previously performed accident analyses.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No

There are no proposed design changes, nor are there any changes in the method by which any safety-related plant structure, system, or component (SSC) performs its specified safety function. The proposed changes will not affect the normal method of plant operation or change any operating parameters. No equipment performance requirements will be affected. The proposed changes will not alter any assumptions made in the safety analyses. No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures will be introduced as a result of this amendment. There will be no adverse effect or challenges imposed on any safety-related system as a result of this amendment. The proposed amendment will not alter the design or performance of the 7300 Process Protection System, Nuclear Instrumentation System, or Solid State Protection System used in the plant protection systems.

Therefore, the proposed changes do not create the possibility of a new or different accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No

There will be no effect on those plant systems necessary to assure the accomplishment of protection functions. There will be no impact on the overpower limit, departure from nucleate boiling ratio (DNBR) limits, heat flux hot channel factor (F_Q), nuclear enthalpy rise hot channel factor ($F\Delta H$), loss of coolant accident peak cladding temperature (LOCA PCT), peak local power density, or any other margin of safety. The applicable radiological dose consequence acceptance criteria for design-basis transients and accidents will continue to be met. The proposed changes do not eliminate any surveillances or alter the frequency of surveillances required by the Technical Specifications. None of the acceptance criteria for any accident analysis will be changed.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John O'Neill, Esq., Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street, NW., Washington, DC 20037.

NRC Branch Chief: Michael T. Markley.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of amendment request: May 4, 2009.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3.7.2, ''Main Steam Isolation Valves (MSIVs),'' to add the main steam isolation valve bypass valves (MSIVBVs) and main steam low point drain isolation valves (MSLPDIVs) to the scope of the TS. In addition, the proposed amendment would make editorial changes to the title and header on each page of TS 3.7.2, and would incorporate other minor changes to revise exception footnote (i) in TS Table 3.3.2–1 of TS 3.3.2, ''ESFAS [Engineered Safety Features Actuation System] Instrumentation,'' to remove the MSIVs from the footnote such that the footnote only addresses the MSIVBVs and MSLPDIVs. The MSIVs would be addressed in new exception footnote (k) added to TS Table 3.3.2–1.

The proposed amendment would add new TS 3.7.19, ''Secondary System Isolation Valves (SSIVs),'' which would provide limiting conditions for operation (LCOs) and surveillance requirements for the SSIVs, steam generator chemical injection isolation valves (SGCIIVs), steam generator blowdown isolation valves (SGBSIVs), and steam generator sample line isolation valves (SGBSSIVs). New Function 10, ''Steam Generator Blowdown System and Sample Line Isolation Valve Actuation,'' would be added to TS Table 3.3.2–1. The SGBSIVs and SGBSSIVs would be addressed in new exception footnote (t) added to Table 3.3.2–1 for Function 10.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change adds requirements to the TS to ensure that systems and components are maintained consistent with the safety analysis and licensing basis.

Requirements are incorporated into the TS for secondary system isolation valves. These changes do not involve any design or physical changes to the facility, including the SSIVs themselves. The design and functional performance requirements, operational characteristics, and reliability of the SSIVs are unchanged. There is no impact on the design safety function of MSIVs, MSIVBVs, MSLPDIVs, MFIVs [main feedwater isolation valves], MFRVs [main feedwater regulating valves] or MFRVBVs [MFRV bypass valves] to close (either as an accident mitigator or as a potential transient initiator). Since no failure mode or initiating condition that could cause an accident (including any plant transient) evaluated per the FSAR [Final Safety Analysis Report]-described safety analyses is created or affected, the change cannot involve a significant increase in the probability of an accident previously evaluated.

With regard to the consequences of an accident and the equipment required for mitigation of the accident, the proposed changes involve no design or physical changes to components in the main steam supply system or feedwater system. There is no impact on the design safety function of MSIVs, MSIVBVs, MSLPDIVs, MFIVs, MFRVs, or MFRVBVs or any other equipment required for accident mitigation. Adequate equipment availability would continue to be required by the TS. The consequences of applicable, analyzed accidents (such as a main steam line break [or] feedline break) are not impacted by the proposed changes.

The changes to TS 3.3.2, TS Table 3.3.2–1, and exception footnotes associated with Table Function 4 and New Function 10 maintain consistency with the Applicability of revised TS 3.7.2 and new TS 3.7.19. Maintaining TS 3.3.2 and TS Table 3.3.2–1 consistent with the Applicability of TS 3.7.2 and TS 3.7.19 is consistent with the Westinghouse Standard Technical Specifications.

These changes involve no physical changes to the facility and do not adversely affect the availability of the safety functions assumed for the MSIVs, MSIVBVs, MSLPDIVs, and SSIVs. Therefore, they do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Based on the above considerations, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes add requirements to the TS that support or ensure the availability of the safety functions assumed or required for the MSIVs, MSIVBVs, MSLPDIVs, and SSIVs. The changes do not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in controlling parameters. Additional requirements are being imposed, but they are consistent with the assumptions made in the safety analysis and licensing basis. The addition of Conditions, Required Actions and Completion Times to TS for the MSIVBVs, MSLPDIVs, and SSIVs does not involve a change in the design, configuration, or operational characteristics of the plant. Further, the proposed changes do not involve any changes in plant procedures for ensuring that the plant is operated within analyzed limits. As such, no new failure modes or mechanisms that could cause a new or different kind of accident from any previously evaluated are introduced.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed addition of Conditions, Required Actions and Completion Times for SSIVs, MSIVBVs, and MSLPDIVs, as well as the proposed change to the LCO and Applicability for TS 3.7.2 and the proposed new TS 3.7.19 (and the corresponding changes to TS 3.3.2, ''ESFAS Instrumentation'') does not alter the manner in which safety limits or limiting safety system settings are determined. No changes to instrument/system actuation setpoints are involved. The safety analysis acceptance criteria are not impacted and the proposed change will not permit plant operation in a configuration outside the design basis. The changes are consistent with the safety analysis and licensing basis for the facility.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John O'Neill, Esq., Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street, NW., Washington, DC 20037.

NRC Branch Chief: Michael T. Markley.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of amendment request: June 1, 2009.

Description of amendment request: The proposed amendment would revise the Limiting Condition for Operation (LCO) Applicability Note for Technical Specification (TS) 3.3.9, ''Boron Dilution Mitigation System (BDMS).''

The LCO Applicability Note would be revised to more explicitly define what the term ''during reactor startup'' means in MODES 2 and 3. This revision to the Applicability Note is proposed to clarify the situations during which the BDMS signal may be blocked.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Overall protection system performance will remain within the bounds of the previously performed accident analyses since there are no design changes. All design, material, and construction standards that were applicable prior to this amendment request will be maintained. There will be no changes to any design or operating limits.

The proposed change will not adversely affect accident initiators or precursors [or] adversely alter the design assumptions, conditions, and configuration of the facility or the manner in which the plant is operated and maintained. There are no design or operating changes to the reactor makeup water system (RMWS), the reactor makeup control system (RMCS), or the chemical and volume control system (CVCS). There will be no decrease in the boron concentration of the boric acid tanks. There will be no changes to the BDMS setpoint or the operation of the BDMS, other than the limited durations during which flux multiplication signal blocking would be allowed. Therefore, there will be no changes that would serve to increase the likelihood of occurrence of an inadvertent boron dilution event.

The proposed change will not alter or prevent the ability of structures, systems, and components (SSCs) from performing their intended functions to mitigate the consequences of an initiating event within the applicable acceptance limits. Exceptions to Technical Specification requirements are allowed and, in fact, rather commonplace when plant operation would otherwise be restricted in a manner that is not commensurate with the desired safety objective, especially when those exceptions are of short duration and are accompanied by compensatory measures.

The proposed change does not physically alter safety-related systems [or] affect the way in which safety-related systems perform their functions.

The inadvertent boron dilution analysis acceptance criteria will continue to be met with the proposed change, with consideration given to the fact that the current licensing basis analyses do not assume concurrent rod withdrawal in the MODES 2 and 3 boron dilution analyses. The licensing basis analyses assume that positive reactivity insertion is being added by a single method, *i.e.,* boron dilution. The MODE 2 licensing basis analysis of an inadvertent boron dilution event in FSAR [Final Safety Analysis Report] Section 15.4.6 assumes that the shutdown banks are fully withdrawn and that the control banks are withdrawn to the 0% power rod insertion limits depicted in the COLR [Core Operating Limits Report]. The MODE 2 analysis credits operator action to swap the charging suction source after an automatic reactor trip, and corresponding rod insertion, on high source range neutron flux. The MODE 3 licensing basis analysis credits automatic mitigation by the BDMS with steady state initial conditions and static initial rod positions (all shutdown and control banks are fully inserted other than the single most reactive rod which is assumed to be fully withdrawn) at bounding RCS [reactor coolant system] T–avg values at either end of MODE 3. Neither the analysis nor the BDMS design basis assumes that the system protects against a rod withdrawal event.

The proposed change will not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. The applicable radiological dose criteria will continue to be met.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

There are [neither] proposed design changes nor are there any changes in the method by which any safety-related plant structure, system, or component (SSC) performs its specified safety function. The proposed change will not affect the normal method of plant operation or change any operating parameters. Equipment performance necessary to fulfill safety analysis missions will be unaffected. The proposed change will not alter any assumptions required to meet the safety analysis acceptance criteria.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures will be introduced as a result of this amendment. There will be no adverse effect or challenges imposed on any safety-related system as a result of this amendment.

The proposed amendment will not alter the design or performance of the 7300 Process Protection System, Nuclear Instrumentation System, or Solid State Protection System used in the plant protection systems.

The proposed change does not, therefore, create the possibility of a new or different accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

There will be no effect on those plant systems necessary to assure the accomplishment of protection functions. There will be no impact on the overpower limit, departure from nucleate boiling ratio (DNBR) limits, heat flux hot channel factor (F_Q), nuclear enthalpy rise hot channel factor ($F\Delta H$), loss of coolant accident peak cladding temperature (LOCA PCT), peak local power density, or any other margin of safety. Mode-specific required shutdown margins in the COLR will not be changed. The applicable radiological dose consequence acceptance criteria will continue to be met.

The proposed change does not eliminate any surveillances or alter the frequency of surveillances required by the Technical Specifications. None of the acceptance criteria for any accident analysis will be changed.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John O'Neill, Esq., Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street, NW., Washington, DC 20037.

NRC Branch Chief: Michael T. Markley.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of amendment request: July 10, 2009.

Description of amendment request: The proposed amendment would delete the Technical Specification (TS) requirements for the containment hydrogen recombiners and hydrogen monitors. The proposed TS changes support implementation of the revision to Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.44, ''Standards for Combustible Gas Control System in Light-Water-Cooled Power Reactors,'' that became effective on October 16, 2003. The proposed changes are consistent with Revision 1 of the NRC-approved Industry/Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–447, ''Elimination of Hydrogen Recombiners and Change to Hydrogen and Oxygen Monitors.''

The NRC staff issued a notice of opportunity for public comments on TSTF–447, Revision 1, published in the **Federal Register** on August 2, 2002 (67 FR 50374), soliciting comments on a model safety evaluation (SE) and a model no significant hazards consideration (NSHC) determination for the elimination of requirements for hydrogen recombiners, and hydrogen and oxygen monitors from TS. Based on its evaluation of the public comments

received, the NRC staff made appropriate changes to the models and included final versions in a notice of availability published in the **Federal Register** on September 25, 2003 (68 FR 55416), regarding the adoption of TSTF–447, Revision 1, as part of the NRC's consolidated line item improvement process (CLIIP).

In addition to the changes related to requirements for the hydrogen recombiners and monitors, this amendment application includes four unrelated, minor changes to correct typographical errors identified in Callaway's TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of NSHC adopted by the licensee is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The revised 10 CFR 50.44 no longer defines a design-basis loss-of-coolant accident (LOCA) hydrogen release, and eliminates requirements for hydrogen control systems to mitigate such a release. The installation of hydrogen recombiners and/or vent and purge systems required by 10 CFR 50.44(b)(3) was intended to address the limited quantity and rate of hydrogen generation that was postulated from a design-basis LOCA. The Commission has found that this hydrogen release is not risk-significant because the design-basis LOCA hydrogen release does not contribute to the conditional probability of a large release up to approximately 24 hours after the onset of core damage. In addition, these systems were ineffective at mitigating hydrogen releases from risk-significant accident sequences that could threaten containment integrity.

With the elimination of the design-basis LOCA hydrogen release, hydrogen monitors are no longer required to mitigate design-basis accidents and, therefore, the hydrogen monitors do not meet the definition of a safety-related component as defined in 10 CFR 50.2. RG [Regulatory Guide] 1.97 Category 1 is intended for key variables that most directly indicate the accomplishment of a safety function for design-basis accident events. The hydrogen monitors no longer meet the definition of Category 1 in RG 1.97. As part of the rulemaking to revise 10 CFR 50.44 the Commission found that Category 3, as defined in RG 1.97, is an appropriate categorization for the hydrogen monitors because the monitors are required to diagnose the course of beyond design-basis accidents.

The regulatory requirements for the hydrogen monitors can be relaxed without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. Classification of the hydrogen monitors as Category 3 and removal of the hydrogen monitors from TS will not prevent an accident management strategy through the use of the SAMGs [severe accident management guidelines], the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of the hydrogen recombiner requirements and relaxation of the hydrogen monitor requirements, including removal of these requirements from TS, does not involve a significant increase in the probability or the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The elimination of the hydrogen recombiner requirements and relaxation of the hydrogen monitor requirements, including removal of these requirements from TS, will not result in any failure mode not previously analyzed. The hydrogen recombiner and hydrogen monitor equipment was intended to mitigate a design-basis hydrogen release. The hydrogen recombiner and hydrogen monitor equipment are not considered accident precursors, nor does their existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radionuclides within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The elimination of the hydrogen recombiner requirements and relaxation of the hydrogen monitor requirements, including removal of these requirements from TS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety.

The installation of hydrogen recombiners and/or vent and purge systems required by 10 CFR 50.44(b)(3) was intended to address the limited quantity and rate of hydrogen generation that was postulated from a design-basis LOCA. The Commission has found that this hydrogen release is not risk-significant because the design-basis LOCA hydrogen release does not contribute to the conditional probability of a large release up to approximately 24 hours after the onset of core damage.

Category 3 hydrogen monitors are adequate to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The intent of the requirements established as a result of the [Three Mile Island], Unit 2 accident, can be adequately met without reliance on safety-related hydrogen monitors.

Therefore, this change does not involve a significant reduction in the margin of safety. Removal of hydrogen monitoring from TS will not result in a significant reduction in their functionality, reliability, and availability.

The NRC staff has reviewed the analysis adopted by the licensee and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John O'Neill, Esq., Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street, NW., Washington, DC 20037.

NRC Branch Chief: Michael T. Markley.

Virginia Electric and Power Company, Docket No. 50–338 North Anna Power Station, Unit No. 1, Louisa County, Virginia

Date of amendment request: July 23, 2009

Description of amendment request: The proposed change, a one-time extension to the Completion Time (CT) of Technical Specification 3.8.9 Condition A, will provide an opportunity to fully investigate the extent of the damaged breaker and its condition to ensure continued bus reliability for the remainder of the operating cycle.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change does not alter any plant equipment or operating practices in such a manner that the probability of an accident is significantly increased. The proposed change will not alter assumptions relative to the mitigation of an accident or transient event. Manual operator actions in the event of an SGTR have been identified during the one-time extended CT for the 1J1 [Motor Control Center] MCC outage. A risk-informed evaluation of these operator actions has been performed and the increase in annual Core Damage and Large Early Release Frequencies associated with the proposed change in the Technical Specification CT are characterized as ''small changes'' by Regulatory Guide (RG) 1.174. The Incremental Conditional Core Damage and Large Early Release Probabilities [ICCDP and ICLERP] associated with the proposed

Technical Specification CT meet the acceptance criteria in Regulatory Guide 1.177.

The ICCDP and ICLERP are 1.01 E–7 per year and 9.86E–9 per year, respectively. These results are below the RG 1.177 limits of 5E–7 for ICCDP and 5E–8 for ICLERP.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

The systems' design and operation are not affected by the proposed change. The safety analysis acceptance criteria stated in the Updated Final Safety Analysis Report is not impacted by the change. Redundancy and diversity of the electrical distribution system will be maintained with the exception of the MCCs 1J 1–2N and 2S. The proposed change will not allow plant operation in a configuration outside the design basis.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The Nuclear Regulatory Commission (NRC) staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Counsel, Dominion Resources Services, Inc., Millstone Power Station, Building 475, 5th Floor, Rope Ferry Road, Rt. 156, Waterford, Connecticut 06385

NRC Branch Chief: Undine Shoop.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, *see* the individual notice in the Federal Register on the day and page cited. This notice does not extend the notice period of the original notice.

Duke Energy Carolinas, LLC, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: March 20, 2008, as supplemented by letters dated May 28, 2008, October 6, 2008, December 17, 2008, and February 12, 2009.

Brief description of amendment request: The proposed amendments would revise the McGuire licensing basis by adopting the Alternative Source Term (AST) radiological analysis methodology as allowed by 10 CFR 50.67, Accident Source Term, for the Loss of Coolant Accident. This amendment request represents full scope implementation of the AST as described in Nuclear Regulatory Commission (NRC) Regulatory Guide 1.183, ''Alternative Radiological Source Terms for Evaluating Design Basis Accidents at Nuclear Power Reactors, Revision 0.''

Date of publication of individual notice in **Federal Register**: February 27, 2009 (74 FR 9009).

Expiration date of individual notice: April 28, 2009.

Duke Energy Carolinas, LLC, *et al.*, Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: June 23, 2008.

Brief description of amendment request: The amendments revise the Technical Specifications (TSs) for Catawba Nuclear Station, Units 1 and 2. This request modifies the subject TS and Bases by changing the logic configuration of TS Table 3.3.2–1, ''Engineered Safety Feature Actuation System Instrumentation'', Function 5.b. (5), ''Turbine Trip and Feedwater Isolation, Feedwater Isolation, Doghouse Water Level—High High.'' The existing one-out-of-one (1/1) logic per train per doghouse is being modified to a two-out-of-three (2/3) logic per train per doghouse. The proposed change will improve the overall reliability of this function and will reduce the potential for spurious actuations.

Date of publication of individual notice in **Federal Register**: February 24, 2009 (74 FR 8276).

Expiration date of individual notice: April 27, 2009.

Duke Energy Carolinas, LLC, *et al.*, Docket No. 50–414, Catawba Nuclear Station, Unit 2, York County, South Carolina

Date of amendment request: November 13, 2008.

Brief description of amendment request: The amendment proposes a one-cycle revision to the Technical Specifications to incorporate an interim alternate repair criterion for steam generator tube repair criteria during the End of Cycle 16 refueling outage and subsequent cycle 17 operation.

Date of publication of individual notice in ***Federal Register***: February 24, 2009 (74 FR 8278).

Expiration date of individual notice: April 27, 2009.

Luminant Generation Company LLC, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: June 8, 2009.

Brief description of amendment request: The proposed amendment would revise Technical Specification (TS) 5.5.9.2, ''Unit 1 Model D76 and Unit 2 Model D5 Steam Generator (SG) Program,'' to exclude portions of the CPSES, Unit 2 Model D5 SG below the top of the SG tubesheet from periodic SG tube inspections. In addition, the proposed amendment would revise TS 5.6.9, ''Unit 1 Model D76 and Unit 2 Model D5 Steam Generator Tube Inspection Report,'' to include reporting requirements specific to the permanent alternate repair criteria for CPSES, Unit 2. The amendment request is supported by Westinghouse WCAP–17072–P, ''H*: Alternate Repair Criteria for the Tube Sheet Expansion Region in Steam Generators with Hydraulically Expanded Tubes (Model D5),'' May 2009.

Date of publication of individual notice in ***Federal Register***: July 23, 2009 (74 FR 36533).

Expiration date of individual notice: September 21, 2009.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the

Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action *see* (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov.*

Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: April 23, 2009.

Brief description of amendments: The amendments revise the Technical Specifications (TSs) by removing working hour restrictions from TS 5.2.2 to support compliance with recent revisions to Title 10 of the *Code of Federal Regulations,* Part 26, Subpart I. The amendments are consistent with the guidance contained in Nuclear Regulatory Commission (NRC) approved Technical Specifications Task Force Traveler 511 (TSTF–511). This TS improvement was made available by the NRC on December 30, 2008 (73 FR 79923) as part of the consolidated line item improvement process.

Date of issuance: August 6, 2009.

Effective date: As of the date of issuance to be implemented with the implementation of the new 10 CFR Part 26, Subpart I requirements.

Amendment Nos.: 292 and 268.

Renewed Facility Operating License Nos. DPR–53 and DPR–69: Amendments revised the License and Technical Specifications.

Date of initial notice in ***Federal Register***: June 2, 2009 (74 FR 26430).

The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated August 6, 2009.

No significant hazards consideration comments received: No.

Duke Energy Carolinas, LLC, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: July 14, 2008.

Brief description of amendments: The changes revised Technical Specifications (TSs) Section 3.7.10, ''Control Room Area Ventilation,'' its associated Bases, and TS Section 5.5 ''Programs and Manuals.'' This LAR institutes the Control Room Habitability Program.

The changes are consistent with NRC-approved Industry Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–448, Revision 3, ''Control Room Habitability Program.'' The availability of this TS improvement was announced in the **Federal Register** on January 17, 2007, as part of the Consolidated Line-Item Improvement Process (CLIIP). The amendments also authorized a change to the Catawba Updated Final Safety Analysis Report (UFSAR).

Date of issuance: July 30, 2009.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: 250 and 245.

Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the licenses and the technical specifications.XXX

Date of initial notice in ***Federal Register***: June 2, 2009 (74 FR 26431).

The Commission's related evaluation, State consultation, and final no significant hazards consideration determination of the amendments is contained in a Safety Evaluation dated July 30, 2009.

No significant hazards consideration comments received: No.

Entergy Gulf States Louisiana, LLC, and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: January 21, 2009, as supplemented by letters dated January 23 and June 22, 2009.

Brief description of amendment: The amendment modified the Technical Specifications (TSs) to adopt U.S. Nuclear Regulatory Commission (NRC)-approved TS Task Force (TSTF) change travelers TSTF–163, TSTF–222, TSTF–230, and TSTF–306, and made two minor administrative corrections.

Date of issuance: August 11, 2009.

Effective date: As of the date of issuance and shall be implemented 60 days from the date of issuance.

Amendment No.: 165.

Facility Operating License No. NPF–47: The amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register***: March 24, 2009 (74 FR 12392). The supplemental letters dated January 23 and June 22, 2009, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 11, 2009.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1 (ANO1), Pope County, Arkansas

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2 (ANO2), Pope County, Arkansas

Entergy Nuclear Operations, Inc., Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant (JAF), Oswego County, New York

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1 (GGNS), Claiborne County, Mississippi

Entergy Nuclear Operations, Inc., Docket Nos. 50–247 and 50–286, Indian Point Nuclear Generating Unit Nos. 2 and 3 (IP2 and IP3), Westchester County, New York

Entergy Nuclear Operations, Inc., Docket No. 50–255, Palisades Plant (PAL), Van Buren County, Michigan

Entergy Nuclear Operations, Inc., Docket No. 50–293, Pilgrim Nuclear Power Station (PIL), Plymouth County, Massachusetts

Entergy Gulf States Louisiana, LLC, and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1 (RBS), West Feliciana Parish, Louisiana

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3 (W3), St. Charles Parish, Louisiana

Date of application for amendment: April 27, 2009, as supplemented July 10, 2009.

Brief description of amendment: The amendments deleted those portions of the Technical Specifications (TSs) superseded by Title 10 of the *Code of Federal Regulations* (10 CFR) Part 26, Subpart I, consistent with U.S. Nuclear Regulatory Commission (NRC)-approved TS Task Force (TSTF) change traveler TSTF–511, Revision 0, ''Eliminate Working Hour Restrictions from TS 5.2.2 to Support Compliance with 10 CFR Part 26.''

Date of issuance: August 4, 2009.

Effective date: As of the date of issuance and shall be implemented by October 1, 2009.

Amendment Nos.: ANO1—237; ANO2—285; JAF—295; GGNS—183; IP2—261; IP3—240; PAL—238; PIL—233; RBS—164; and W3—221.

Facility Operating License Nos. DPR–51 (ANO1), NPF–6 (ANO2), DPR–59 (JAF), NPF–29 (GGNS), DPR–26 (IP2), DPR–64 (IP3), DPR–20 (PAL), DPR–35 (PIL), NPF–47 (RBS), and NPF–38 (W3): The amendments revised the Facility Operating Licenses and Technical Specifications.

Date of initial notice in ***Federal Register***: June 2, 2009 (74 FR 26432). The supplement dated July 10, 2009, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 4, 2009.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: September 17, 2008, as supplemented by letters dated January 8, March 18, and June 30, 2009.

Brief description of amendment: The amendment revised the Operating License and modified Technical Specification (TS) ¾.3.1 and Note 2 of TS Table 4.3–1. The changes result in the addition of conservatism to Core Protection Calculator power indications when calibrations are required in certain conditions.

Date of issuance: August 10, 2009.

Effective date: As of the date of issuance and shall be implemented 60 days from the date of issuance.

Amendment No.: 222.

Facility Operating License No. NPF–38: The amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register***: November 4, 2008 (73 FR 65695). The supplemental letters dated January 8, March 18, and June 30, 2009, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 10, 2009.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket No. 50–461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Exelon Generation Company, LLC, and PSEG Nuclear LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units 2 and 3, York and Lancaster Counties, Pennsylvania

Exelon Generation Company, LLC, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: June 9, 2008, as supplemented by letter dated March 30, 2009.

Brief description of amendments: The amendments revise the Technical Specification (TS) surveillance requirement (SR) frequency in TS 3.1.3, ''Control Rod OPERABILITY.'' The amendments also clarify the requirement to fully insert all insertable control rods for the limiting condition for operation in TS 3.3.1.2, Required Action E.2, ''Source Range Monitoring Instrumentation'' (Clinton Power Station only). Finally, the amendments revise Example 1.4–3 in Section 1.4, ''Frequency,'' to clarify the applicability of the 1.25 surveillance test interval extension.

Date of issuance: August 11, 2009.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 188, 232/225, 193/180, 272/276, 244/239.

Facility Operating License Nos. NPF–62, DPR–19, DPR–25, NPF–11, NPF–18, DPR–44, DPR–56, DPR–29, DPR–30: The amendments revised the Technical Specifications/Licenses.

Date of initial notice in ***Federal Register***: August 12, 2009 (73 FR 46928) The March 30, 2009, supplement contained clarifying information and did not change the NRC staff's initial proposed finding of no significant hazards consideration.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 11, 2009.

No significant hazards consideration comments received: No.

Luminant Generation Company LLC, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2 (CPSES), Somervell County, Texas

Date of amendment request: April 1, 2009, as supplemented by letter dated July 9, 2009.

Brief description of amendments: The amendments deleted Technical Specification (TS) 5.2.2.d, in TS 5.2.2, ''Unit Staff,'' regarding the requirement to develop and implement administrative procedures to limit the working hours of personnel who perform safety-related functions. In addition, paragraphs e and f of TS 5.2.2 were renumbered to d and e and in TS 5.2.2.b the reference to 5.2.2.f was revised to 5.2.2.e to reflect the removal of paragraph d of TS 5.2.2. The change is consistent with U.S. Nuclear Regulatory Commission (NRC)-approved Revision 0 to TS Task Force (TSTF) Improved Technical Specification change traveler, TSTF–511, ''Eliminate Working Hour Restrictions from TS 5.2.2 to Support Compliance with 10 CFR Part 26.'' The availability of this TS improvement was announced in the **Federal Register** on December 30, 2008 (73 FR 79923), as part of the consolidated line item improvement process.

Date of issuance: August 7, 2009.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: Unit 1–148; Unit 2–148.

Facility Operating License Nos. NPF–87 and NPF–89: The amendments revised the Facility Operating Licenses and Technical Specifications.

Date of initial notice in ***Federal Register***: May 19, 2009 (74 FR 23445). The supplemental letter dated July 9, 2009, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 7, 2009.

No significant hazards consideration comments received: No.

Nine Mile Point Nuclear Station, LLC, Docket Nos. 50–220 and 50–410, Nine Mile Point Nuclear Station, Unit Nos. 1 and 2 (NMP 1 and 2), Oswego County, New York

Date of application for amendment: February 11, 2009.

Brief description of amendments: The amendments delete those portions of the Technical Specifications (TSs) superseded by Title 10 of the *Code of Federal Regulations* (10 CFR), Part 26, Subpart I. This change is consistent with Nuclear Regulatory Commission (NRC) approved Technical Specification Task Force (TSTF) Improved Standard Technical Specifications Change Traveler TSTF–511, Revision 0, ''Eliminate Working Hour Restrictions from TS 5.2.2 to Support Compliance with 10 CFR Part 26.'' These changes were described in a Notice of Availability for Consolidated Line Item Improvement Process TSTF–511 published in the **Federal Register** on December 30, 2008 (73 FR 79923).

Date of issuance: July 27, 2009.

Effective date: As of the date of issuance to be implemented by October 1, 2009.

Amendment Nos.: 203 and 131.

Renewed Facility Operating License Nos. DPR–063 and NPF–069: The amendments revise the License and TSs.

Date of initial notice in ***Federal Register***: April 21, 2009 (73 FR 18255).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 27, 2009.

No significant hazards consideration comments received: No.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: September 2, 2008.

Brief description of amendments: The amendment approved the licensee's request to incorporate a revision in the Updated Final Safety Analysis Report (UFSAR) Section 13.7.2.3, ''PRA Risk Categorization,'' to add a separate set of criteria for assessing the risk significance of the risk achievement worth values of common cause failures as part of the probabilistic risk assessment analysis of the risk importance of components.

Date of issuance: August 12, 2009

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: Unit 1–191; Unit 2–179.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Facility Operating Licenses, and Updated Final Safety Analysis Report.

Date of initial notice in ***Federal Register***: December 2, 2008 (73 FR 73354).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 12, 2009.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units 1 and 2, Louisa County, Virginia

Date of application for amendments: February 6, 2009.

Brief description of amendments: The proposed amendments deleted applicable portions of the Technical Specifications (TSs) superseded by Part 26, Subpart I of Title 10 of the *Code of Federal Regulations* (10 CFR). This change is consistent with Nuclear Regulatory Commission (NRC)-approved Revision 0 to Technical Specification Task Force (TSTF) Improved Standard Technical Specification Change Traveler, TSTF–511, ''Eliminate Working Hour Restrictions from TS 5.2–2 to Support Compliance with 10 CFR Part 26.''

Date of issuance: July 29, 2009.

Effective date: As of the date of issuance and shall be implemented by October 1, 2009.

Amendment Nos.: 256 and 237.

Renewed Facility Operating License Nos. NPF–4 and NPF–7: Amendments change the license and the technical specifications.

Date of initial notice in ***Federal Register:*** March 24, 2009 (74 FR 12396).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 29, 2009.

No significant hazards consideration comments received: No.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: August 14, 2008.

Brief description of amendment: The amendment revised Technical Specification (TS) 3.3.2, ''Engineered Safety Feature Actuation System (ESFAS) Instrumentation,'' to extend the Surveillance Frequency on selected ESFAS slave relays from 92 days to 18 months.

Date of issuance: July 30, 2009.

Effective date: As of its date of issuance and shall be implemented within 90 days of the date of issuance.

Amendment No.: 183.

Renewed Facility Operating License No. NPF–42. The amendment revised the Operating License and Technical Specifications.

Date of initial notice in ***Federal Register:*** October 7, 2008 (73 FR 58379).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 30, 2009.

No significant hazards consideration comments received: No.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: August 14, 2008, as supplemented by letter dated April 10, 2009.

Brief description of amendment: The amendment revised Technical Specification (TS) 3.3.2, ''Engineered Safety Feature Actuation System (ESFAS) Instrumentation,'' TS 3.7.2, ''Main Steam Isolation Valves (MSIVs),'' and added new TS 3.7.19, ''Secondary System Isolation Valves (SSIVs).'' TS 3.7.2 has been revised to add MSIV bypass valves to the scope of TS 3.7.2. TS Table 3.3.2–1 has been revised to reflect the addition of the MSIV bypass valves to TS 3.7.2 and the associated applicability to be consistent with Westinghouse Standard Technical Specifications (NUREG–1431, Revision 3.0). TS 3.7.19 has been added to include a limiting condition for operation, conditions/required actions, and surveillance requirements for the steam generator blowdown isolation valves and steam generator blowdown sample isolation valves.

Date of issuance: July 31, 2009.

Effective date: As of the date of issuance and shall be implemented prior to startup from Refueling Outage 17.

Amendment No.: 184.

Renewed Facility Operating License No.: NPF–42. The amendment revised the Operating License and Technical Specifications.

Date of initial notice in ***Federal Register***: October 7, 2008 (73 FR 58679). The supplemental letter dated April 10, 2009, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 31, 2009.

No significant hazards consideration comments received: No.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: March 6, 2009, as supplemented by letter dated July 14, 2009.

Brief description of amendment: The amendment revised Technical Specification (TS) 5.2.2, ''Unit Staff,'' to eliminate working hour restrictions (TS 5.2.2.d) to support compliance with Title 10 of the Code of Federal Regulations (10 CFR) Part 26. In addition, paragraphs e and f of TS 5.2.2 were renumbered to d and e to reflect the removal of paragraph d of TS 5.2.2, and a reference in 5.2.2b was updated to reflect the renumbering of 5.2.2f. to 5.2.2e. The request is consistent with the guidance contained in U.S. Nuclear Regulatory Commission (NRC)-approved TS Task Force (TSTF) change traveler TSTF–511, Revision 0, ''Eliminate Working Hour Restrictions from TS 5.2.2 to Support Compliance with 10 CFR Part 26.''

Date of issuance: August 7, 2009.

Effective date: As of its date of issuance and shall be implemented by October 1, 2009.

Amendment No.: 185.

Renewed Facility Operating License No.: NPF–42. The amendment revised the Operating License and Technical Specifications.

Date of initial notice in ***Federal Register***: April 21, 2009 (74 FR 18258). The supplemental letter dated July 14, 2009, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 7, 2009.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 14th day of August 2009.

For the Nuclear Regulatory Commission.

Allen G. Howe,

Acting Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E9–20403 Filed 8–24–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0371; Docket No. 030–14680]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment to Byproduct Materials License No. 29–00117–06, for Unrestricted Release of the Merck and Company's Facility in Rahway, NJ

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Environmental Assessment and Finding of No Significant Impact for License Amendment.

FOR FURTHER INFORMATION CONTACT: Betsy Ullrich, Senior Health Physicist, Commercial & R&D Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, PA 19406; telephone (610) 337–5040; fax number (610) 337–5269; or by e-mail: *Elizabeth.ullrich@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Byproduct Materials License No. 29–00117–06. This license is held by Merck and Company, Inc (the Licensee), for its Merck and Company, Merck Research Laboratories (the Facility), located at 126 East Lincoln Avenue in Rahway, New Jersey. Issuance of the amendment would authorize release of the Facility's Waste Incinerator for unrestricted use. The Licensee requested this action in a letter dated May 21, 2009. The NRC has prepared an Environmental Assessment (EA) in support of this proposed action in accordance with the requirements of Title 10, *Code of Federal Regulations* (CFR), part 51 (10 CFR part 51). Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate with respect to the proposed action. The amendment will be issued to the Licensee following the publication of this FONSI and EA in the **Federal Register.**

II. Environmental Assessment

Identification of Proposed Action

The proposed action would approve the Licensee's May 21, 2009 license amendment request, resulting in release of the Waste Incinerator for unrestricted use. License No. 29–00117–06 was issued on August 11, 1978, pursuant to 10 CFR part 30, and has been amended periodically since that time. This license authorizes the Licensee to use unsealed byproduct material for purposes of conducting research and development activities on laboratory bench tops and in hoods, and incineration of radioactive waste.

The Waste Incinerator is situated within Building 77 at 126 East Lincoln Avenue, and consists of the incinerator room and associated effluent component parts and mechanical component parts. The Waste Incinerator is located in an industrial area. Within the Waste Incinerator, use of licensed materials was confined to the Conveyor System Area, the Cold Room Area, the Burn Chamber and Kiln Area, the Loading Ram Area, the Loading Dock Area, the Fly Ash System and Bag House Area, the Restroom, the Mechanical Room, and the Control Room and its Stairwell.

In 2009, the Licensee ceased using the Waste Incinerator for licensed waste disposal and initiated a survey and decontamination of the Waste Incinerator. Based on the Licensee's historical knowledge of the site and the conditions of the Waste Incinerator, the Licensee determined that only routine decontamination activities, in accordance with their NRC-approved, operating radiation safety procedures, were required. The Licensee was not required to submit a decommissioning plan to the NRC because worker cleanup activities and procedures are consistent with those approved for routine operations. The Licensee conducted surveys of the Waste Incinerator and provided information to the NRC to demonstrate that it meets the criteria in subpart E of 10 CFR part 20 for unrestricted release.

Need for the Proposed Action

The Licensee has ceased using the Waste Incinerator for disposal of licensed materials at the Facility and

seeks the unrestricted use of its Waste Incinerator.

Environmental Impacts of the Proposed Action

The historical review of licensed activities conducted at the Facility shows that such activities involved use of the following radionuclides with half-lives greater than 120 days: Hydrogen-3 and carbon-14. Prior to performing the final status survey, the Licensee conducted decontamination activities, as necessary, in the areas of the Waste Incinerator affected by these radionuclides.

The Licensee conducted a final status survey on April 6 through April 9, 2009. This survey covered all areas associated with the Waste Incinerator. The final status survey report was attached to the Licensee's amendment request dated May 21, 2009. The Licensee elected to demonstrate compliance with the radiological criteria for unrestricted release as specified in 10 CFR 20.1402 by using the screening approach described in NUREG–1757, ''Consolidated NMSS Decommissioning Guidance,'' Volume 2. The Licensee used the radionuclide-specific derived concentration guideline levels (DCGLs), developed there by the NRC, which comply with the dose criterion in 10 CFR 20.1402. These DCGLs define the maximum amount of residual radioactivity on building surfaces, equipment, and materials, and in soils, that will satisfy the NRC requirements in subpart E of 10 CFR part 20 for unrestricted release. The Licensee's final status survey results were below these DCGLs and are in compliance with the As Low As Reasonably Achievable (ALARA) requirement of 10 CFR 20.1402. The NRC thus finds that the Licensee's final status survey results are acceptable.

Based on its review, the staff has determined that the affected environment and any environmental impacts associated with the proposed action are bounded by the impacts evaluated by the ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities'' (NUREG–1496) Volumes 1–3 (ML042310492, ML042320379, and ML042330385). The staff finds there were no significant environmental impacts from the use of radioactive material at the Waste Incinerator. The NRC staff reviewed the docket file records and the final status survey report to identify any non-radiological hazards that may have impacted the environment surrounding the Waste Incinerator. No such hazards or impacts to the environment were identified. The NRC has identified no other radiological or non-radiological activities in the area that could result in cumulative environmental impacts.

The NRC staff finds that the proposed release of the portion of the Facility described above for unrestricted use is in compliance with 10 CFR 20.1402. Although the Licensee will continue to perform licensed activities at other parts of the Facility, the Licensee must ensure that this decommissioned area does not become recontaminated. Before the license can be terminated, the Licensee will be required to show that the entire Facility, including previously-released areas, complies with the radiological criteria in 10 CFR 20.1402. Based on its review, the staff considered the impact of the residual radioactivity at the Waste Incinerator and concluded that the proposed action will not have a significant effect on the quality of the human environment.

Environmental Impacts of the Alternatives to the Proposed Action

Due to the largely administrative nature of the proposed action, its environmental impacts are small. Therefore, the only alternative the staff considered is the no-action alternative, under which the staff would leave things as they are by simply denying the amendment request. This no-action alternative is not feasible because it conflicts with 10 CFR 30.36(d), requiring that decommissioning of byproduct material facilities or portions thereof be completed and approved by the NRC after licensed activities cease. The NRC's analysis of the Licensee's final status survey data confirmed that the Waste Incinerator meets the requirements of 10 CFR 20.1402 for unrestricted release. Additionally, denying the amendment request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the no-action alternative are therefore similar, and the no-action alternative is accordingly not further considered.

Conclusion

The NRC staff has concluded that the proposed action is consistent with the NRC's unrestricted release criteria specified in 10 CFR 20.1402. Because the proposed action will not significantly impact the quality of the human environment, the NRC staff concludes that the proposed action is the preferred alternative.

Agencies and Persons Consulted

NRC provided a draft of this Environmental Assessment to the State of New Jersey Department of Environmental Protection (NJDEP) for review on July 7, 2009. On July 31, 2009, NJDEP responded by letter. The State agreed with the conclusions of the EA, and otherwise had no comments.

The NRC staff has determined that the proposed action is of a procedural nature, and will not affect listed species or critical habitat. Therefore, no further consultation is required under section 7 of the Endangered Species Act. The NRC staff has also determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no further consultation is required under section 106 of the National Historic Preservation Act.

III. Finding of No Significant Impact

The NRC staff has prepared this EA in support of the proposed action. On the basis of this EA, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate.

IV. Further Information

Documents related to this action, including the application for license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents related to this action are listed below, along with their ADAMS accession numbers.

[1] Letter dated May 21, 2009, with the ''Final Status Survey Report, Merck Waste Incinerator,'' report dated May 18, 2009 [ML091480219];

[2] Letter dated June 19, 2009 [ML091770200];

[3] NUREG–1757, ''Consolidated NMSS Decommissioning Guidance;''

[4] Title 10, *Code of Federal Regulations,* part 20, subpart E, ''Radiological Criteria for License Termination;''

[5] Title 10, *Code of Federal Regulations,* part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions;'' and

[6] NUREG–1496, ''Generic Environmental Impact Statement in

Support of Rulemaking on Radiological Criteria for License Termination of NRC–Licensed Nuclear Facilities.''

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Region I, 475 Allendale Road, King of Prussia, PA this 17th day of August 2009.

For the Nuclear Regulatory Commission.

James Dwyer,

Chief, Commercial & R&D Branch, Division of Nuclear Materials Safety, Region I.

[FR Doc. E9–20406 Filed 8–24–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0370; Docket No. 030–04544]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment to Byproduct Materials License No. 19–07538–01 for the Unrestricted Release of the Department of Health & Human Services Facility Located In Rockville, MD

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Environmental Assessment and Finding of No Significant Impact for License Amendment.

FOR FURTHER INFORMATION CONTACT: Dennis Lawyer, Health Physicist, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania; telephone 610–337–5366; fax number 610–337–5393; or by e-mail: *dennis.lawyer@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Byproduct Materials License No. 19–07538–01. This license is held by Department of Health & Human Services, Food and Drug Administration, Center for Devices and Radiological Health (the Licensee), for its Building T2 (the Facility), located at 12720 Twinbrook Parkway in Rockville, Maryland. Issuance of the amendment would authorize release of the Facility for unrestricted use. The Licensee requested this action in a letter dated April 13, 2009. The NRC has prepared an Environmental Assessment (EA) in support of this proposed action in accordance with the requirements of Title 10, *Code of Federal Regulations* (CFR), part 51 (10 CFR part 51). Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate with respect to the proposed action. The amendment will be issued to the Licensee following the publication of this FONSI and EA in the **Federal Register.**

II. Environmental Assessment

Identification of Proposed Action

The proposed action would approve the Licensee's April 13, 2009, license amendment request, resulting in release of the Facility for unrestricted use. License No. 19–07538–01 was issued on July 21, 1961, pursuant to 10 CFR part 30, and has been amended periodically since that time. This license authorized the Licensee to use unsealed byproduct material for purposes of conducting research and development activities on laboratory bench tops and in hoods; however, during the period of time the license has been in effect, unsealed materials have only been stored at the Facility.

The Facility is a 5,121 square foot building situated on a 4-acre complex and consists of office and work space. The Facility is located in a mixed residential/commercial area.

In March 2007, the Licensee ceased licensed activities at the Facility and initiated a survey and decontamination of the Facility. Based on the Licensee's historical knowledge of the site and the conditions of the Facility, the Licensee determined that only routine decontamination activities, in accordance with their NRC-approved, operating radiation safety procedures, were required. The Licensee was not required to submit a decommissioning plan to the NRC because worker cleanup activities and procedures are consistent with those approved for routine operations. The Licensee conducted surveys of the Facility and provided information to the NRC to demonstrate that it meets the criteria in subpart E of 10 CFR part 20 for unrestricted release.

Need for the Proposed Action

The Licensee has ceased conducting licensed activities at the Facility and seeks the unrestricted use of its Facility.

Environmental Impacts of the Proposed Action

The historical review of licensed activities conducted at the Facility shows that only sealed sources were used and that unsealed materials were stored in a safe. The surveys conducted at the Facility shows that the following unsealed radionuclides with half-lives greater than 120 days were stored at the Facility: Barium 133, cesium 137, americium 241, and uranium 238. The uranium 238 was not part of a specific license but was possessed under the general license described in 10 CFR 40.22(a). Prior to performing the final status survey, the Licensee conducted decontamination activities, as necessary, in the areas of the Facility affected by these radionuclides.

The Licensee conducted a final status survey between October 30 and November 24, 2008. The final status survey report was attached to the Licensee's amendment request dated April 13, 2009. Some amendments to the Final Radiological Status Survey Report were included in the Licensee's letter dated May 13, 2009. Additional survey information was included in the Licensee's letter dated May 27, 2009. The Licensee elected to demonstrate compliance with the radiological criteria for unrestricted release as specified in 10 CFR 20.1402, by using the screening approach described in NUREG–1757, ''Consolidated NMSS Decommissioning Guidance,'' Volume 2. The Licensee used the radionuclide-specific derived concentration guideline levels (DCGLs), developed there by the NRC, which comply with the dose criterion in 10 CFR 20.1402. Because NRC has not established a screening value for barium 133, the licensee developed a DCGL for barium 133 for its Facility. The Licensee conducted site-specific dose modeling using input parameters specific to the Facility. The licensee used the default values in RESERAD–BUILD, Version 6.4. The NRC reviewed the Licensee's methodology and proposed barium 133 DCGL and concluded that the proposed barium 133 DCGL is acceptable for use as release criteria at the Facility. These DCGLs define the maximum amount of residual radioactivity on building surfaces, equipment, and materials that will satisfy the NRC requirements in subpart E of 10 CFR part 20 for unrestricted release. The Licensee's final status survey results were below these DCGLs and are in compliance with the As Low As Reasonably Achievable (ALARA) requirement of 10 CFR 20.1402. The NRC thus finds that

the Licensee's final status survey results are acceptable.

Based on its review, the staff has determined that the affected environment and any environmental impacts associated with the proposed action are bounded by the impacts evaluated by the ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities'' (NUREG–1496) Volumes 1–3 (ML042310492, ML042320379, and ML042330385). The staff finds there were no significant environmental impacts from the use and storage of radioactive material at the Facility. The NRC staff reviewed the docket file records and the final status survey report to identify any non-radiological hazards that may have impacted the environment surrounding the Facility. No such hazards or impacts to the environment were identified. The NRC has identified no other radiological or non-radiological activities in the area that could result in cumulative environmental impacts.

The NRC staff finds that the proposed release of the Facility for unrestricted use and the amendment of the NRC materials license is in compliance with 10 CFR 20.1402. Based on its review, the staff considered the impact of the residual radioactivity at the Facility and concluded that the proposed action will not have a significant effect on the quality of the human environment.

Environmental Impacts of the Alternatives to the Proposed Action

Due to the largely administrative nature of the proposed action, its environmental impacts are small. Therefore, the only alternative the staff considered is the no-action alternative, under which the staff would leave things as they are by simply denying the amendment request. This no-action alternative is not feasible because it conflicts with 10 CFR 30.36(d), requiring that decommissioning of byproduct material facilities be completed and approved by the NRC after licensed activities cease. The NRC's analysis of the Licensee's final status survey data confirmed that the Facility meets the requirements of 10 CFR 20.1402 for unrestricted release. Additionally, denying the amendment request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the no-action alternative are therefore similar, and the no-action alternative is accordingly not further considered.

Conclusion

The NRC staff has concluded that the proposed action is consistent with the NRC's unrestricted release criteria specified in 10 CFR 20.1402. Because the proposed action will not significantly impact the quality of the human environment, the NRC staff concludes that the proposed action is the preferred alternative.

Agencies and Persons Consulted

NRC provided a draft of this Environmental Assessment to the Maryland Department of the Environment for review on July 8, 2008. On August 11, 2009, the Maryland Department of the Environment's Air and Radiation Management Administration and Hazardous Waste Administration responded by electronic mail. The State agreed with the conclusions of the EA, and otherwise had no comments.

The NRC staff has determined that the proposed action is of a procedural nature and will not affect listed species or critical habitat. Therefore, no further consultation is required under section 7 of the Endangered Species Act. The NRC staff has also determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

III. Finding of No Significant Impact

The NRC staff has prepared this EA in support of the proposed action. On the basis of this EA, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate.

IV. Further Information

Documents related to this action, including the application for license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents related to this action are listed below, along with their ADAMS accession numbers.

1. NUREG–1757, ''Consolidated NMSS Decommissioning Guidance;''

2. Title 10, *Code of Federal Regulations,* part 20, subpart E, ''Radiological Criteria for License Termination;''

3. Title 10, *Code of Federal Regulations,* part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions;''

4. NUREG–1496, ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities;''

5. Department of Health & Human Services amendment request dated April 13, 2009 (ML091040713);

6. Department of Health & Human Services additional information letter dated May 13, 2009 (ML091350560); and

7. Department of Health & Human Services additional information letter dated May 27, 2009 (ML091480626).

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *PDR.Resource@nrc.gov.* These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Region I, 475 Allendale Road, King of Prussia, PA this 17th day of August 2009.

For the Nuclear Regulatory Commission.

James P. Dwyer,

Chief, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I.

[FR Doc. E9–20408 Filed 8–24–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0362; Docket No. 72–11]

Sacramento Municipal Utility District; Rancho Seco Independent Spent Fuel Storage Installation; Notice of Docketing and Issuance of Amendment to Materials License No. SNM–2510

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of license amendment.

DATES: A request for a hearing must be filed by October 26, 2009

FOR FURTHER INFORMATION CONTACT: Shana Helton, Senior Project Manager, Licensing Branch, Division of Spent Fuel Storage and Transportation, Office

of Nuclear Material Safety and Safeguards (NMSS), U.S. Nuclear Regulatory Commission (NRC), Rockville, MD 20852. *Telephone:* (301) 492–3284; *fax number:* (301) 492–3348; *e-mail: shana.helton@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC or Commission) has issued Amendment 3 to Materials License SNM–2510 held by Sacramento Municipal Utility District (SMUD) for the receipt, possession, transfer, and storage of spent fuel at the Rancho Seco Independent Spent Fuel Storage Installation (ISFSI), located on the site of the Rancho Seco Nuclear Generating Station located in Sacramento County, California. License No. SNM–2510 authorizes the licensee to receive, acquire, and possess the power reactor spent fuel and other radioactive materials associated with spent fuel storage as specified in the License; to use such material for the purpose(s) and at the place(s) designated in the License; and to deliver or transfer such material to persons authorized to receive it in accordance with the regulations of the applicable Part(s). The amendment is effective on the date of issuance.

By application dated November 5, 2008, as supplemented January 27, 2009, March 4, 2009, July 1, 2009, and July 29, 2009 (Agencywide Documents Access and Management System (ADAMS) Accession Nos. ML083190252, ML090370875, ML090820276, ML091950457, and ML092220241, respectively), the Sacramento Municipal Utility District submitted a request to the U.S. Nuclear Regulatory Commission (NRC) in accordance with Title 10 of the Code of Federal Regulations (10 CFR) 72.56, ''Application for amendment of license,'' to amend the License to allow the storage of six damaged fuel assemblies in five fuel-with-control-component dry storage canisters. This amendment does not affect the design, operation, or surveillance of the ISFSI.

An NRC administrative review, documented in a letter to SMUD dated March 4, 2009 (ADAMS Accession No. ML090640248), found the application acceptable to begin a technical review. This amendment complies with the requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

The staff finds that this amendment does not involve any changes in the scope or type of operations presently authorized by the license. The staff has determined that the changes proposed by the amendment will not result in: (1) A significant increase in the amounts of any effluents; (2) a significant increase in individual or cumulative occupational radiation exposure; (3) a significant construction impact; or (4) a significant increase in the potential for or consequences from radiological accidents. Accordingly, pursuant to 10 CFR 51.22(c)(11), a categorical exclusion applies to this action, and as such neither an environmental assessment nor an environmental impact statement will be conducted.

II. Opportunity To Request a Hearing

In accordance with 10 CFR 72.46(b)(2), the staff has determined that this license amendment, requesting the storage of six damaged fuel assemblies in five canisters, does not present a genuine issue as to whether public health and safety will be significantly affected. Therefore, the publication of a notice of proposed action and an opportunity for hearing or a notice of hearing is not warranted. Notice is hereby given of the right of interested persons to request a hearing on whether this action should be rescinded or modified.

Any person whose interest may be affected by this proceeding and who desires to have this action rescinded or modified must file a request for a hearing and, a specification of the contentions which the person seeks to have litigated in the hearing, in accordance with the NRC E–Filing rule, which the NRC promulgated on August 28, 2007 (72 FR 49139). All documents filed in NRC adjudicatory proceedings, including documents filed by interested governmental entities participating under 10 CFR 2.315(c) and any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, must be filed in accordance with the E–Filing rule. The E–Filing rule requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases, to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E–Filing, at least ten (10) days prior to the filing deadline, the petitioner/requestor should contact the Office of the Secretary by e-mail at *HEARINGDOCKET@NRC.GOV,* or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E–Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E–Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html.* Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.*

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, they can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m., Eastern Time on the due date. Upon receipt of a transmission, the E–Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E–Filing system.

A person filing electronically using the agency's adjudicatory e-filing system may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC electronic filing Help Desk, which is available between 8 a.m. and 8 p.m.,

Eastern Time, Monday through Friday, excluding government holidays. The toll-free help line number is (866) 672–7640. A person filing electronically may also seek assistance by sending an e-mail to the NRC electronic filing Help Desk at *MSHD.Resource@nrc.gov.*

Participants who believe that they have a good cause for not submitting documents electronically must, in accordance with 10 CFR 2.302(g), file an exemption request with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp,* unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include social security numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

The formal requirements for documents contained in 10 CFR 2.304(c)–(e) must be met. If the NRC grants an electronic document exemption in accordance with 10 CFR 2.302(g)(3)), then the requirements for paper documents, set forth in 10 CFR 2.304(b) must be met.

In accordance with 10 CFR 2.309(b), a request for a hearing must be filed by October 26, 2009.

In addition to meeting other applicable requirements of 10 CFR 2.309, a request for a hearing filed by a person other than an applicant must state:

1. The name, address, and telephone number of the requester;

2. The nature of the requester's right under the Act to be made a party to the proceeding;

3. The nature and extent of the requester's property, financial or other interest in the proceeding;

4. The possible effect of any decision or order that may be issued in the proceeding on the requester's interest; and

5. The circumstances establishing that the request for a hearing is timely in accordance with 10 CFR 2.309(b).

In accordance with 10 CFR 2.309(f)(1), a request for hearing or petition for leave to intervene must set forth with particularity the contentions sought to be raised. For each contention, the request or petition must:

1. Provide a specific statement of the issue of law or fact to be raised or controverted;

2. Provide a brief explanation of the basis for the contention;

3. Demonstrate that the issue raised in the contention is within the scope of the proceeding;

4. Demonstrate that the issue raised in the contention is material to the findings that the NRC must make to support the action that is involved in the proceeding;

5. Provide a concise statement of the alleged facts or expert opinions which support the requester's/petitioner's position on the issue and on which the requester/petitioner intends to rely to support its position on the issue; and

6. Provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the requester/petitioner disputes and the supporting reasons for each dispute, or, if the requester/petitioner believes the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the requester's/petitioner's belief.

In addition, in accordance with 10 CFR 2.309(f)(2), contentions must be based on documents or other information available at the time the petition is to be filed, such as the application or other supporting document filed by an applicant or licensee, or otherwise available to the petitioner. The requester/petitioner may amend those contentions or file new contentions if there are data or conclusions in the NRC documents that differ significantly from the data or conclusions in the applicant's documents. Otherwise, contentions may be amended or new contentions filed after the initial filing only with leave of the presiding officer.

Requesters/petitioners should, when possible, consult with each other in preparing contentions and combine similar subject matter concerns into a joint contention, for which one of the co-sponsoring requesters/petitioners is designated the lead representative. Further, in accordance with 10 CFR 2.309(f)(3), any requester/petitioner that wishes to adopt a contention proposed by another requester/petitioner must do so, in accordance with the E–Filing rule, within ten days of the date the contention is filed, and designate a representative who shall have the authority to act for the requester/petitioner.

In accordance with 10 CFR 2.309(g), a request for hearing and/or petition for leave to intervene may also address the selection of the hearing procedures, taking into account the provisions of 10 CFR 2.310.

III. Further Information

The NRC has prepared a Safety Evaluation Report (SER) that documents the information that was reviewed and NRC's conclusion. In accordance with 10 CFR 2.390 of NRC's ''Rules of Practice,'' final NRC records and documents related to this action, including the application for amendment and supporting documentation and the SER, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access ADAMS, which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are: ML083190252 for the amendment request dated November 5, 2008; ML090370875 for the January 27, 2009, supplement, ML090820276 for the March 4, 2009 supplement; ML091950457 for the July 1, 2009, supplement; ML092220241 for the July 29, 2009, supplement, and ML092240439 for the SER.

If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR)

Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

These documents may also be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O–1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland this 11th day of August 2009.

For the Nuclear Regulatory Commission.

Shana Helton,

Senior Project Manager, Licensing Branch, Division of Spent Fuel Storage and Transport, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E9–20412 Filed 8–24–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards

In accordance with the purposes of Sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on September 10–12, 2009, 11555 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the Federal Register on Monday, October 6, 2008, (73 FR 58268–58269).

Thursday, September 10, 2009, Commissioners' Conference Room O–1F16, One White Flint North, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–11 a.m.: License Renewal Application and Final Safety Evaluation Report (SER) for the Indian Point Nuclear Generating Units 2 and 3 (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and Entergy Nuclear Operations, Inc., regarding the License Renewal Application for the Indian Point Generating Units 2 and 3, the associated NRC staff's final Safety Evaluation Report, and related matters.

11:15 a.m.–12:45 p.m.: License Renewal Application and Final Safety Evaluation Report for the Three Mile Island Nuclear Station, Unit 1 (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and AmerGen Energy Company, LLC, regarding the license renewal application for the Three Mile Island Nuclear Station, Unit 1, the associated NRC staff's final SER, and related matters.

1:45 p.m.–3:15 p.m.: Draft Final Revision 2 to Regulatory Guide 1.189, ''Fire Protection for Nuclear Power Plants'' (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the draft final Revision 2 to Regulatory Guide 1.189, NRC staff's resolution of public comments, and related matters.

3:30 p.m.–5 p.m.; Draft Digital Instrumentation and Control (DI&C) Research Plan for Fiscal Years (FY) 2010–2014 (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding draft DI&C Research Plan for FY2010–2014, and related matters.

5:15 p.m.–7 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters discussed during this meeting as well as the letter transmitting the ACRS report on the quality assessment of selected research projects.

Friday, September 11, 2009, Commissioners' Conference Room O–1F16, One White Flint North, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10 a.m.: Updated information related to the License Renewal Application and Supplemental SER for the Beaver Valley Power Station (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and First Energy Nuclear Operating Company regarding the updated information related to the license renewal application for the Beaver Valley Power Station, the associated NRC staff's Supplemental SER, and related matters.

10:15 a.m.–11:30 a.m.: Subcommittee Reports (Open)—The Committee will hear reports by and hold discussions with the Chairmen of the ESBWR; AP1000; Plant Operations and Fire Protection; Evolutionary Power Reactor (EPR); and Reliability and PRA Subcommittees regarding: the resolution of containment issues associated with the ESBWR design certification and selected chapters of the draft SER associated with the North Anna Combined License (COL) application referencing the ESBWR design that were discussed on July 21–22, and August 21, 2009; selected chapters of the amended AP1000 Design Control Document and the Bellefonte COL application that were discussed on July 23–24, 2009; matters discussed during the visits to the Watts Bar Nuclear Plant and Region II Office on July 28 and July 30, 2009; draft final revision 1 to Regulatory Guide 1.205, ''Risk-Informed, Performance-Based Fire Protection,'' that was discussed during the meeting on August 18, 2009; and the containment topical report associated with the EPR design certification that was discussed on September 9, 2009, respectively.

12:30 p.m.–1:15 p.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future ACRS meetings, and matters related to the conduct of ACRS business, including anticipated workload and member assignments. [**Note:** A portion of this session may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy]

1:15 p.m.–1:30 p.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations to comments and recommendations included in recent ACRS reports and letters.

1:45 p.m.–7 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters discussed during this meeting as well as the letter transmitting the ACRS report on the quality assessment of selected research projects.

Saturday, September 12, 2009, Commissioners' Conference Room O–1F16, One

White Flint North, Rockville, Maryland

8:30 a.m.–1:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 6, 2008, (73 FR 58268–58269). In accordance with those procedures, oral or written views may be presented

by members of the public, including representatives of the nuclear industry. Thirty-five hard copies of each presentation or handout should be provided to the Designated Federal Official 30 minutes before the meeting. In addition, one electronic copy of each presentation should be e-mailed to the Designated Federal Official one day before meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the Designated Federal Official with a CD containing each presentation at least 30 minutes before the meeting. Electronic recordings will be permitted only during the open portions of the meeting. Persons desiring to make oral statements should notify the Cognizant ACRS staff named below five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Cognizant ACRS staff prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience.

In accordance with Subsection 10(d) Public Law 92–463, I have determined that it may be necessary to close a portion of this meeting noted above to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which constitute a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552b(c)(2) and (6).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, as well as the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Girija Shukla, Cognizant ACRS staff (301–415–6855), between 7:15 a.m. and 5 p.m. (ET). ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr.resource@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/ACRS/.*

Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m., (ET), at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated: August 19, 2009.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E9–20414 Filed 8–24–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Meetings; Sunshine Act

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Weeks of August 24, 31, September 7, 14, 21, 28, 2009.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of August 24, 2009

There are no meetings scheduled for the week of August 24, 2009.

Week of August 31, 2009—Tentative

Thursday, September 3, 2009

9:30 a.m.

Meeting with Organization of Agreement States (OAS) and Conference of Radiation Control Program Directors (CRCPD) (Public Meeting) (*Contact:* Andrea Jones, 301–415–2309).

This meeting will be webcast live at the Web address—*http://www.nrc.gov*

Week of September 7, 2009—Tentative

There are no meetings scheduled for the week of September 7, 2009.

Week of September 14, 2009—Tentative

There are no meetings scheduled for the week of September 14, 2009.

Week of September 21, 2009—Tentative

There are no meetings scheduled for the week of September 21, 2009.

Week of September 28, 2009—Tentative

Wednesday, September 30, 2009

9:30 a.m.

Discussion of Management Issues (Closed—Ex. 2).

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*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. *Contact person for more information:* Rochelle Bavol, (301) 415–1651.

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The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html*

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301–492–2279, *TDD:* 301–415–2100, or by e-mail at *rohn.brown@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an e-mail to *darlene.wright@nrc.gov.*

Dated: August 20, 2009.

Rochelle C. Bavol,

Office of the Secretary.

[FR Doc. E9–20565 Filed 8–21–09; 4:15 pm]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. MC2009–39; Order No. 282]

International Mail

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request concerning a minor revision to Global Express Guaranteed (GXG) service. This notice addresses procedural steps associated with this filing.

DATES: Comments are due August 28, 2009.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.*

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 and *stephen.sharfman@prc.gov.*

SUPPLEMENTARY INFORMATION: On August 18, 2009, the Postal Service filed a formal notice with the Commission concerning a change in classification for Global Express Guaranteed (GXG) service pursuant to 39 CFR 3020.90 *et seq.*[1] The change revises the requirements for eligibility for online discounts for GXG service to reflect current practice which allows customers to purchase online discounted postage for GXG service and other international expedited and parcel services through Click-N-Ship at *http://www.usps.com* or by using other commercial online postage providers. *Id.* at 1.

Formerly, customers were eligible to receive online discounts for GXG service by registration via the GXG Web site at *http://www.usps.com.*

The Postal Service asserts this classification change is consistent with the requirements of 39 U.S.C. 3642, and further proposes conforming Mail Classification Schedule language. *Id.*

Pursuant to 39 CFR 3020.92, the Commission provides notice of the Postal Service's filing and affords interested persons an opportunity to express views and offer comments on whether the proposed classification change is inconsistent with 39 U.S.C. 3642. Comments are due August 28, 2009.

39 CFR 3020.91 requires the Postal Service to file notice of the proposed change with the Commission no less than 15 days prior to the effective date of the proposed change. The Notice indicates the effective date of the change is September 8, 2009. *Id.*

The Commission appoints Kenneth E. Richardson to serve as Public Representative in this docket.

It is ordered:

1. The Commission establishes Docket No. MC2009–39 for consideration of the matters raised in this docket.

2. Pursuant to 39 U.S.C. 505, Kenneth E. Richardson is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in this proceeding are due no later than August 28, 2009.

By the Commission.

Judith M. Grady,

Acting Secretary.

[FR Doc. E9–20401 Filed 8–24–09; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Notice of United States Postal Service of Classification Change, August 18, 2009 (Notice). This Notice is available on the Commission's Web site, *http://www.prc.gov.*

SECURITIES AND EXCHANGE COMMISSION

COMMODITY FUTURES TRADING COMMISSION

[Release No. 34–60539; File No. 4–588]

Joint Meetings on Harmonization of Regulation

AGENCIES: Securities and Exchange Commission (''SEC'') and Commodity Futures Trading Commission (''CFTC'') (each, an ''Agency,'' collectively, the ''Agencies'').

ACTION: Notice of joint meetings; request for comment.

SUMMARY: On June 17, 2009, the Department of the Treasury released a White Paper on Financial Regulatory Reform (''White Paper'') calling on the SEC and the CFTC to ''make recommendations to Congress for changes to statutes and regulations that would harmonize regulation of futures and securities.'' Specifically, the White Paper recommended ''that the CFTC and the SEC complete a report to Congress by September 30, 2009 that identifies all existing conflicts in statutes and regulations with respect to similar types of financial instruments and either explains why those differences are essential to achieve underlying policy objectives with respect to investor protection, market integrity, and price transparency or makes recommendations for changes to statutes and regulations that would eliminate the differences.''

On September 2, 2009, from 9 a.m. until 5 p.m., and September 3, 2009, from 9 a.m. until 12:30 p.m., the SEC and the CFTC will hold joint meetings to discuss assessments of the current regulatory scheme, harmonization of the agencies' rules, and recommendations for changes to statutes and regulations.

The meetings will consist of five panels. Topics to be discussed will include the regulation of exchanges and markets; the regulation of intermediaries; the regulation of clearance and settlement; enforcement; and the regulation of investment funds.

On September 2, 2009, a meeting will be held in Lobby Level Hearing Room (Room 1000) at the CFTC's headquarters at Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. On September 3, 2009, a meeting will be held in the auditorium at the SEC's headquarters at 100 F Street, NE., Washington, DC 20549. The meetings will be open to the public with seating on a first-come, first-served basis. The meetings also will be available via Web cast on the SEC's Web site at *http://www.sec.gov* and at the CFTC's Web site at *http://www.cftc.gov.* A transcript of the meetings will be made and entered into the Agencies' public comment files, which will remain open for the receipt of written comments until September 14, 2009. The SEC and the CFTC welcome feedback regarding any of the topics to be addressed at the meetings.

DATES: Comments should be received on or before September 14, 2009.

Because the Agencies will jointly review all comments submitted, interested parties may send comments to either Agency and need not submit responses to both Agencies. Respondents are encouraged to use the title ''Harmonization of Regulation'' to facilitate the organization and distribution of comments between the Agencies. Interested parties are invited to submit responses to:

Securities and Exchange Commission: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the SEC's Internet comment form (*http://www.sec.gov/rules/other.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number 4–588 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number 4–588. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The SEC staff will post all comments on the SEC's Internet Web site (*http://www.sec.gov/rules/other.shtml*). Comments also will be available for inspection and copying in the SEC's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You

should submit only information that you wish to make available publicly.

Commodity Futures Trading Commission

• Written comments may be mailed to the Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW., Washington, DC 20581, attention Office of the Secretariat; transmitted by facsimile to the CFTC at (202) 418–5521; or transmitted electronically to *secretary@cftc.gov.* Reference should be made to ''Harmonization of Regulation.''

FOR FURTHER INFORMATION CONTACT: Sara Gillis Hawkins, Special Counsel, at (202) 551–5523, or Leigh W. Duffy, Attorney-Adviser, at (202) 551–5928, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549; or Sauntia Warfield, (202) 418–5084, at the CFTC.

By the Securities and Exchange Commission.

Dated: August 19, 2009.

Florence E. Harmon,

Deputy Secretary.

By the Commodity Futures Trading Commission.

Dated: August 19, 2009.

David A. Stawick,

Secretary.

[FR Doc. E9–20356 Filed 8–24–09; 8:45 am]

BILLING CODE 8010–01–P, 6351–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting.

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, August 27, 2009 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Casey, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, August 27, 2009 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 551–5400.

Dated: August 20, 2009.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–20506 Filed 8–21–09; 11:15 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

[Public Notice 6737]

Bureau of Political-Military Affairs; Statutory Debarment Under the Arms Export Control Act and the International Traffic in Arms Regulations

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has imposed statutory debarment pursuant to § 127.7(c) of the International Traffic in Arms Regulations (''ITAR'') (22 CFR Parts 120 to 130) on persons convicted of violating, attempting to violate or conspiring to violate Section 38 of the Arms Export Control Act, as amended, (''AECA'') (22 U.S.C. 2778).

DATES: *Effective Date:* Date of conviction as specified for each person.

FOR FURTHER INFORMATION CONTACT: Daniel Buzby, Acting Director, Office of Defense Trade Controls Compliance, Bureau of Political-Military Affairs, Department of State (202) 663–2980.

SUPPLEMENTARY INFORMATION: Section 38(g)(4) of the AECA, 22 U.S.C. 2778(g)(4), prohibits the Department of State from issuing licenses or other approvals for the export of defense articles or defense services where the applicant, or any party to the export, has been convicted of violating certain statutes, including the AECA. In implementing this provision, Section 127.7 of the ITAR provides for ''statutory debarment'' of any person who has been convicted of violating or conspiring to violate the AECA. Persons subject to statutory debarment are prohibited from participating directly or indirectly in the export of defense articles, including technical data, or in the furnishing of defense services for which a license or other approval is required.

Statutory debarment is based solely upon conviction in a criminal proceeding, conducted by a United States Court, and as such the administrative debarment procedures outlined in Part 128 of the ITAR are not applicable.

The period for debarment will be determined by the Assistant Secretary for Political-Military Affairs based on the underlying nature of the violations, but will generally be for three years from the date of conviction. At the end of the debarment period, export privileges may be reinstated only at the request of the debarred person followed by the necessary interagency consultations, after a thorough review of the circumstances surrounding the conviction, and a finding that appropriate steps have been taken to mitigate any law enforcement concerns, as required by Section 38(g)(4) of the AECA. Unless export privileges are reinstated, however, the person remains debarred.

Department of State policy permits debarred persons to apply to the Director, Office of Defense Trade Controls Compliance, for reinstatement beginning one year after the date of the debarment. Any decision to grant reinstatement can be made only after the statutory requirements under Section 38(g) (4) of the AECA have been satisfied.

Exceptions, also known as transaction exceptions, may be made to this debarment determination on a case-by-case basis at the discretion of the Assistant Secretary of State for Political-Military Affairs, after consulting with the appropriate U.S. agencies. However, such an exception would be granted only after a full review of all circumstances, paying particular attention to the following factors: whether an exception is warranted by overriding U.S. foreign policy or national security interests; whether an exception would further law enforcement concerns that are consistent with the foreign policy or national security interests of the United States; or whether other compelling circumstances exist that are consistent with the foreign policy or national security interests of the United States, and that do not conflict with law enforcement concerns. Even if exceptions are granted, the debarment continues until subsequent reinstatement.

Pursuant to Section 38(g)(4) of the AECA and Section 127.7(c) of the ITAR, the following persons are statutorily debarred as of the date of their AECA conviction:

(1) Miguel Alonso Apodaca, November 6, 2007, U.S. District Court, District of Arizona, Case # CR 07–00296–002–TUC–DCB (JCG).

(2) Cedric Lloyd Manuel, November 6, 2007, U.S. District Court, District of Arizona, Case # CR 07–00296–001–TUC–DCB (JCG).

(3) Joaquin Rodriguez-Diaz, February 6, 2006, U.S. District Court, District of Arizona, Case # 2:05–cr–00965–ROS–1.

(4) Chi Mak, March 26, 2008, U.S. District Court, Central District of California, Case # 8:05–cr–00293–CJC.

(5) Tai Wang Mak, April 21, 2008, U.S. District Court, Central District of California, Case # 8:05–cr–00293–CJC.

(6) David Mehrdad Talebi, November 26, 2007, U.S. District Court, Southern District of California, Case # 05CR2213–LAB.

(7) Ali Danny Talebi, July 7, 2008, U.S. District Court, Southern District of California, Case # 05CR2213–LAB.

(8) Murray Rinzler, November 30, 2007, U.S. District Court, District of Connecticut, Case # 3:07cr61 (AHN).

(9) World Electronics, Inc., November 30, 2007, U.S. District Court, District of Connecticut, Case # 3:07cr61 (AHN).

(10) Leonard Allen Schenk, December 11, 2007, U.S. District Court, Northern District of Florida, Case # 3:07cr90–001LAC.

(11) Jerri C. Stringer, December 13, 2007, U.S. District Court, Northern District of Florida, Case # 3:07cr90–002LAC.

(12) Lance Michael Brooks, May 27, 2009, U.S. District Court, Southern District of Florida, Case # 0:07–60265–CR–1 and 0:08–60154–CR–1.

(13) Shahrazad Mir Gholikhan, March 6, 2009, U.S. District Court, Southern District of Florida, Case # 0:05–60238–CR–COHN (S) (S) (S).

(14) Hassan Saied Keshari, May 13, 2009, U.S. District Court, Southern District of Florida, Case # 1:08–20612–CR–SEITZ–01.

(15) Bertrand Lalsingh, February 11, 2008, U.S. District Court, Southern District of Florida, Case # 07–60273–CR–MARRA.

(16) Osmar D. Mejia, August 2, 2008, U.S. District Court, Southern District of Florida, Case # 0:08CR60028–001.

(17) Joseph Piquet, May 18, 2009, U.S. District Court, Southern District of Florida, Case # 2:08–14031–CR–MARTINEZ–1.

(18) Rigel Optics, Inc., May 12, 2009, U.S. District Court, Southern District of Iowa, Case # 4:08–cr–00086–001.

(19) Riad Skaff, July 14, 2008, U.S. District Court, Northern District of Illinois, Case # 07–CR–41–1.

(20) Haji Subandi, December 19, 2007, U.S. District Court, District of Maryland, Case # CCB–06–0439.

(21) Green Supply, Inc., January 22, 2008, U.S. District Court, Eastern District of Missouri, Case # 4:07CR659 CEJ.

(22) Jyimin Horng, January 17, 2008, U.S. District Court, District of New Jersey, Case # 1:05–CR–00612–02.

(23) Octavio Rodriguez-Gutierrez, October 29, 2008, U.S. District Court, District of New Mexico, Case # 2:08CR01600–001JEC.

(24) Raul Rodriguez-Gutierrez, October 27, 2008, U.S. District Court, District of New Mexico, Case # 2:08CR01746–001JEC.

(25) David M. Janowski, January 26, 2009, U.S. District Court, Northern District of Ohio, Case # 1:08CR389–01.

(26) Master A. Ohene Kwesi Yeboah, April 20, 2009, U.S. District Court, Southern District of Ohio, Case # 2:08–CR–138.

(27) Ken Miller, August 14, 2008, U.S. District Court, Eastern District of Pennsylvania, Case # 07–452.

(28) Euro Optics, Ltd., July 31, 2008, U.S. District Court, Middle District of Pennsylvania, Case # 4:07–CR–0407.

(29) Akanonu Fabian Mgbobila, October 4, 2007, U.S. District Court, Middle District of Tennessee, Case # 3:06–00126.

(30) Guillermo Aguilar-Medina, October 23, 2007, U.S. District Court, Southern District of Texas, Case # 1:07CR00279–002.

(31) Luis Miguel Rodriguez-Vazques, October 23, 2007, U.S. District Court, Southern District of Texas, Case # 1:07CR00279–001.

(32) Erik Arguelles, March 18, 2008, U.S. District Court, Southern District of Texas, Case # 1:07CR00797–001.

(33) Jose Cipriano-Sanchez, April 13, 2009, U.S. District Court, Southern District of Texas, Case # 7:07CR01274–001.

(34) Jorge Alberto Cervantes-Garcia, March 27, 2008, U.S. District Court, Southern District of Texas, Case # 1:07CR00857–001.

(35) Rogelio Esparza-Juarez, December 31, 2008, U.S. District Court, Southern District of Texas, Case # 7:08CR01042–001.

(36) Francisco Gaona-Doval, October 27, 2008, U.S. District Court, Southern District of Texas, Case # 7:07CR00906–001.

(37) Roberto Garza-Lopez, March 14, 2008, U.S. District Court, Southern District of Texas, Case # 7:07CR00671–001.

(38) Juan Lopez-Martinez, March 14, 2008, U.S. District Court, Southern District of Texas, Case # 7:07CR00671–002.

(39) Luis Martin Velasquez-Ibarra, March 14, 2008, U.S. District Court, Southern District of Texas, Case # 7:07CR00671–003.

(40) Reneberto Velasquez-Velez, March 14, 2008, U.S. District Court, Southern District of Texas, Case # 7:07CR00671–004.

(41) Jose Fernando Licona-Cruz, April 4, 2008, U.S. District Court, Southern District of Texas, Case # 7:07CR01128–001.

(42) Gregorio Magallan, Jr., February 2, 2009, U.S. District Court, Southern District of Texas, Case # 7:08CR00892–002.

(43) Rogelio Ramos-Reyes, January 21, 2008, U.S. District Court, Southern District of Texas, Case # 7:07CR00916–001.

(44) Lorena Beatriz Salas, February 4, 2008, U.S. District Court, Southern District of Texas, Case # 1:07CR00753–001.

(45) Victor Hugo Salazar-Mata, February 10, 2009, U.S. District Court, Southern District of Texas, Case # 7:07CR00986–001.

(46) Greg Anthony Belcik, December 10, 2007, U.S. District Court, Western District of Texas, Case # DR–07–CR–007(1)–AML.

(47) Robert Frederick Gibson, August 24, 2007, U.S. District Court, Western District of Texas, Case # EP–07–CR–249–DB(2).

(48) Robert Thomas Caldwell, November 9, 2007, U.S. District Court, Western District of Texas, Case # EP–07–CR–249–DB(3).

(49) Abraham Trujillo, November 12, 2008, U.S. District Court, District of Utah, Case # DUTX 2:07–cr–00714–001.

(50) David John Waye, November 12, 2008, U.S. District Court, District of Utah, Case # DUTX 2:07–cr–00714–002.

(51) Shu Quan-Sheng, April 10, 2009, U.S. District Court, Eastern District of Virginia, Case # 2:08cr194.

(52) Jason Dean Smith, June 8, 2007, U.S. District Court, Western District of Washington, Case # CR05–00390RSM–001.

(53) Kendall S. George, July 13, 2007, U.S. District Court, Western District of Washington, Case # CR06–0205RSM.

As noted above, at the end of the three-year period following the date of conviction, the above named persons/entities remain debarred unless export privileges are reinstated.

Debarred persons are generally ineligible to participate in activity regulated under the ITAR (*see, e.g.,* sections 120.1(c) and (d), and 127.11(a)). Also, under Section 127.1(c) of the ITAR, any person who has knowledge that another person is subject to debarment or is otherwise ineligible may not, without disclosure to and written approval from the Directorate of Defense Trade Controls, participate, directly or indirectly, in any export in which such ineligible person may benefit therefrom or have a direct or indirect interest therein.

This notice is provided for purposes of making the public aware that the persons listed above are prohibited from participating directly or indirectly in activities regulated by the ITAR, including any brokering activities and in any export from or temporary import into the United States of defense articles, related technical data, or defense services in all situations covered by the ITAR. Specific case information may be obtained from the Office of the Clerk for the U.S. District Courts mentioned above and by citing the court case number where provided.

Dated: August 17, 2009.

Andrew J. Shapiro,

Assistant Secretary, Bureau of Political-Military Affairs, Department of State.

[FR Doc. E9–20443 Filed 8–24–09; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2009–0183]

Agency Information Collection Activities; Extension of a Currently-Approved Information Collection Request: Training Certification for Entry-Level Commercial Motor Vehicle (CMV) Operators

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit to the Office of Management and Budget (OMB) for approval its request to extend a currently-approved information collection request (ICR) entitled, ''Training Certification for Entry-level CMV Operators,'' that relates to the training requirements for drivers applying for a commercial driver's license (CDL). There is no change from the burden estimate approved by OMB for this ICR on March 11, 2008. On May 28, 2009, FMCSA published a **Federal Register** notice (74 FR 25607) allowing for a 60-day comment period on the extension of this ICR. The Agency did not receive any comments in response to this notice.

DATES: Please send your comments by September 24, 2009. OMB must receive your comments by this date in order to act quickly on the ICR.

ADDRESSES: All comments should reference Federal Docket Management System (FDMS) Docket Number FMCSA–2009–0183. Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/Office of the Secretary, and sent via electronic mail to *oira_submission@omb.eop.gov,* faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, Driver and Carrier Operations Division, FMCSA, 1200 New Jersey Avenue, SE., Washington, DC 20590. *Telephone:* (202) 366–4325. *E-mail: MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION:

Title: Training Certification for Entry-Level Commercial Motor Vehicle Operators.

OMB Control Number: 2126–0028.

Type of Request: Extension of a currently-approved information collection request.

Respondents: Entry-level CMV drivers.

Estimated Number of Respondents: 45,611.

Estimated Time per Response: 10 minutes.

Expiration Date: September 30, 2009.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 7,602 hours. FMCSA estimates that an entry-level driver requires approximately 10 minutes to complete the tasks necessary to comply with the regulation. Those tasks are: photocopying the training certificate, giving the photocopy to the motor carrier employer, and placing the original of the certificate in a personal file. Therefore, the annual burden for all entry-level drivers of CMVs is 7,602 hours [45,611 respondents × 10 minutes/60 minutes to complete a response = 7,601.8 hours (rounded to 7,602 hours)].

Definitions: ''Commercial Motor Vehicle (CMV)'': A motor vehicle operated in commerce and having a gross vehicle weight rating of 26,001 pounds or more, regardless of actual weight, or designed to transport 16 or more passengers, or used to transport placardable and dangerous hazardous materials (49 CFR 383.5). The term ''CMV'' is limited to this definition in this document; the term ''CDL driver'' is used because the operators of these CMVs are required to have a valid commercial driver's license (CDL). This rule currently applies solely to ''entry-level'' CDL drivers, i.e. those who have less than 1 year of experience operating a CMV in interstate commerce (49 CFR 380.502(b)).

Background:

The Motor Carrier Act of 1935 provides that ''The Secretary of Transportation may prescribe requirements for (1) qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier; and (2) qualification and maximum hours of service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operation'' [49 U.S.C. 3502(b)]. This Act is applicable to interstate commerce and not intrastate commerce. The Commercial Motor Vehicle Safety Act of 1986 (CMVSA) created the CDL program and defined ''commerce'' in such as way as to include interstate and intrastate operations (49 U.S.C. 31302(2),(4)]. Section 4007(a)(2) of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102–240, December 18, 1991) directed the FHWA to ''commence a rulemaking proceeding on the need to require training of all entry-level drivers of CMVs.'' The Congress did not explicitly provide that ISTEA extended to operations in intrastate commerce. In view of the nature of the concurrent authority created by the CMVSA and the Motor Carrier Act of 1935, and the absence of direction from the Congress in ISTEA, FMCSA has decided that entry-level training requirements should be confined to those drivers applying for a CDL who intend to operate CMVs in interstate commerce.

The text of the 60-day notice of the proposed extension of this ICB, published on May 28, 2009 (74 FR 25607), failed to cite the Motor Carrier Act of 1935, upon which this ICR is primarily based. Today's authority for this driver training activity is cited correctly and as it should have been cited in that notice. There has been no change in the statutory authority for this training since publication of the 60-day notice. For a more details of the Agency's analysis, see the section titled, ''Legal Basis for the Rulemaking,'' on the first page of the Notice of Proposed Rulemaking titled, ''Minimum Training Requirements for Entry-Level CMV Operators'' (72 FR 73226, December 26, 2007).

On May 21, 2004, by final rule, FMCSA mandated training for all interstate CDL operators in four subject areas, effective July 20, 2004 (69 FR 29384). In 2005, the final rule was challenged in the U.S. Court of Appeals for the D.C. Circuit. While the court ordered a remand so the Agency could review the matter, the court did not vacate the rule. Consequently, the 2004 final rule is currently in effect (*Advocates for Highway and Auto Safety* v. *Federal Motor Carrier Safety Administration, 429 F. 3d 1136 (D.C.Cir. 2005).*

Public Comments Invited: You are asked to comment on any aspect of this information collection request, including: (1) Whether the proposed collection is necessary for the FMCSA's performance of functions; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

Issued on: August 18, 2009.

David Anewalt,

Acting Associate Administrator for Research and Information Technology.

[FR Doc. E9–20391 Filed 8–24–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2009–0253; Notice No. 09–4]

Notice of Approval: Lithium Battery Shipping Descriptions

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA).

ACTION: Notice of approval.

SUMMARY: PHMSA is authorizing persons who offer lithium metal and lithium ion cells and batteries for transportation in commerce, and persons who transport lithium metal and lithium ion cells and batteries in commerce, to describe those articles in the same manner as recently adopted in international regulations. PHMSA will consider adopting these alternate shipping descriptions into the Hazardous Materials Regulations at a future date.

DATES: *Effective Date:* This notice of approval is effective August 25, 2009.

FOR FURTHER INFORMATION CONTACT: Donald Burger, Office of Hazardous Materials Special Permits and Approvals, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001, telephone (202) 366–4535.

SUPPLEMENTARY INFORMATION:

I. Background

The § 172.101 Hazardous Materials Table (HMT) in the Hazardous Material Regulations (HMR; 49 CFR Parts 171–180) contains the following entries for lithium batteries, which apply to both lithium metal (primary; non-rechargeable) and lithium ion (secondary; rechargeable) batteries:

Lithium battery	9	UN3090	PG II
Lithium batteries contained in equipment	9	UN3091	PG II
Lithium batteries packed with equipment	9	UN3091	PG II

In 2006, the United Nations Committee of Experts on the Transport of Dangerous Goods adopted separate entries for lithium metal and lithium ion batteries (see chart below) into the dangerous goods list in the Fifteenth revised edition of the UN Recommendations on the Transport of Dangerous Goods, in order to distinguish lithium metal from lithium ion batteries. The International Civil Aviation Organization (ICAO) and the International Maritime Organization subsequently adopted these entries into their respective dangerous goods lists.

We did not adopt these new shipping descriptions for lithium batteries in a final rule published January 14, 2009 under Dockets HM–224D and HM–215J (74 FR 2200) harmonizing the HMR with recent changes to international regulations because we had not proposed these changes in the notice of proposed rulemaking (NPRM) (73 FR 44803; July 31, 2008). In response to comments to the NPRM that urged PHMSA to adopt the separate entries for lithium metal and lithium ion batteries, we noted that the HMR permit compliance with the ICAO Technical Instructions for the Safe Transport of Dangerous Goods by Air (Technical Instructions). Thus, the separate shipping descriptions for lithium metal and lithium ion batteries may be used for air transportation, both domestically and internationally, and for transportation by motor vehicle and rail immediately before or after being transported by aircraft. [74 FR 2207] We also stated we planned to complete an assessment of the costs and benefits of further restrictions and available alternatives before developing additional lithium battery rulemaking proposals and therefore, PHMSA did not adopt changes to the lithium battery requirements including the separate shipping descriptions. [74 FR 2207]

Since that time, we have concluded that assigning the same shipping descriptions to both lithium metal and lithium ion batteries, which are regulated differently based on differences in chemistry, functionality, and behavior when exposed to a fire, causes significant problems in acceptance procedures for carriers and may unnecessarily hinder or delay the transportation of these products. While the HMR permit the use of the ICAO Technical Instructions as well as the International Maritime Dangerous Goods Code (IMDG Code) for domestic transportation when a portion of the transportation is by aircraft or vessel, subsequent domestic transportation of packages containing lithium batteries remains difficult.

PHMSA is currently working on a rulemaking intended to enhance the safe transportation of lithium batteries. As part of this rulemaking, we are considering adoption of the international shipping descriptions for lithium metal and lithium ion batteries. To facilitate commerce, however, PHMSA believes shippers should be

permitted to use the international lithium battery shipping descriptions for the domestic transportation of lithium batteries even though the shipping descriptions have not been adopted into the HMR.

Section 172.101(l)(2) of the HMR permits alterations to the shipping descriptions in the HMT with prior written approval of the Associate Administrator for Hazardous Materials Safety. In accordance with § 172.101(l)(2), PHMSA is authorizing use of the lithium battery shipping descriptions (i.e., the lithium battery hazardous materials descriptions and UN identification numbers) that have been adopted into dangerous goods lists in the international regulations as alternatives to the lithium battery hazardous materials descriptions and UN identification numbers currently authorized in the HMT, effective as of the date of publication of this notice in the **Federal Register**. For clarity, the following chart provides a comparative list of the current shipping descriptions in the HMT and the corresponding international shipping descriptions that may be used.

HMR Shipping Description		International Shipping Description	
Lithium battery	UN3090	Lithium ion batteries *including lithium ion polymer batteries*	UN3480
		Lithium metal batteries *including lithium alloy batteries*	UN3090
Lithium batteries contained in equipment	UN3091	Lithium ion batteries contained in equipment *including lithium ion polymer batteries*.	UN3481
		Lithium metal batteries, contained in equipment *including lithium alloy batteries*.	UN3091
Lithium batteries packed with equipment	UN3091	Lithium ion batteries packed with equipment *including lithium ion polymer batteries*.	UN3481
		Lithium metal batteries packed with equipment *including lithium alloy batteries*.	UN3091

II. Approval

Regulatory Authority

Authority is granted under 49 CFR 172.101(l)(2) to persons who offer lithium metal and lithium ion cells and batteries for transportation in commerce, and persons who transport lithium metal and lithium ion cells and batteries in commerce, to use the following hazardous materials descriptions and UN identification numbers as alternatives to the hazardous materials descriptions and UN identification numbers set forth in the 49 CFR 172.101 Hazardous Materials Table, as applicable:

Lithium ion batteries contained in equipment *including lithium ion polymer batteries*	UN3481
Lithium ion batteries *including lithium ion polymer batteries*	UN3480
Lithium ion batteries packed with equipment *including lithium ion polymer batteries*	UN3481
Lithium metal batteries contained in equipment *including lithium alloy batteries*	UN3091
Lithium metal batteries *including lithium alloy batteries*	UN3090
Lithium metal batteries packed with equipment *including lithium alloy batteries*	UN3091

For the convenience of the user of this approval, the complete entries with the authorized alternative hazardous materials descriptions and UN identification numbers are as follows:

§ 172.101 HAZARDOUS MATERIAL TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification Nos.	PG	Label codes	Special provisions (§ 172.102)	Packaging (§ 173.***)			Quantity limitations		Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Lithium ion batteries contained in equipment *including lithium ion polymer batteries*.	9	UN3481	II	9	29, 188, 189, 190, A54, A55, A104.	185	185	None	See A104.	35 kg	A.	
	Lithium ion batteries *including lithium ion polymer batteries*.	9	UN3480	II	9	29, 188, 189,190, A54, A55, A100	185	185	None	See A100.	35 kg gross.	A.	
	Lithium ion batteries packed with equipment *including lithium ion polymer batteries*.	9	UN3481	II	9	29, 188, 189, 190, A54, A55, A103.	185	185	None	See A103.	35 kg gross.	A.	
	Lithium metal batteries contained in equipment *including lithium alloy batteries*.	9	UN3091	II	9	29, 188, 189, 190, A54, A55, A101, A104.	185	185	None	See A101.	35 kg	A.	
	Lithium metal batteries *including lithium alloy batteries*.	9	UN3090	II	9	29, 188, 189,190, A54, A55, A100	185	185	None	Forbidden. See A100.	35 kg gross.	A.	
	Lithium metal batteries packed with equipment *including lithium alloy batteries*.	9	UN3091	II	9	29, 188, 189, 190, A54, A55, A101, A103.	185	185	None	See A101.	35 kg gross.	A.	

Conditions for Approval

This notice of approval does not provide relief from any other requirements of the Hazardous Materials Regulations (49 CFR Parts 171–180) except as stated herein. Lithium metal batteries continue to be prohibited onboard passenger-carrying aircraft except as provided in Special Provision A101 of § 172.101(c)(2). This approval is effective August 25, 2009 until terminated by the Associate Administrator for Hazardous Materials Safety.

Modes of Transportation Authorized

Motor vehicle, passenger and cargo aircraft, cargo vessel, and rail.

General Provisions

Failure by any person using this approval to comply with the terms and conditions of this approval or the HMR may result in suspension or termination of the authority to use this approval. Failure to comply may also subject persons to penalties prescribed in 49 U.S.C. 5123 and 5124.

Issued in Washington, DC, on August 18, 2009.

Robert Richard,

Acting Associate Administrator for Hazardous Materials Safety.

[FR Doc. E9–20343 Filed 8–24–09; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

SMS Rail Service (Waiver Petition Docket Number FRA–2009–0068)

The SMS Rail Service (SLRS) seeks a waiver from compliance of certain provisions of the Federal hours of service law (49 U.S.C. Chapter 211; HSL). Specifically, SLRS requests relief from 49 U.S.C. § 21103(a)(4) which states that a train employee may not be required or allowed to remain or go on duty after that employee has initiated an on-duty period each day for 6 consecutive days, unless that employee has had at least 48 hours off duty at the employee's home terminal.

SLRS is not unionized and is not subject to any collective bargaining agreements. In current operations, SLRS train employees voluntarily work 6 days per week. Under the provisions of U.S.C. § 21103(a)(4), these employees would be prohibited from returning to duty without 48 hours off duty following the volunteer day. The entire SLRS petition may be viewed at *http://www.regulations.gov* under the docket number listed above.

The HSL, at 49 U.S.C. 21108(a), contemplates that any request for a waiver from its requirements will be a joint waiver involving the relevant railroad carrier(s) and nonprofit employee labor organization(s) representing the class or craft of directly affected covered service employees. Because SLRS's covered service employees are not represented by any employee labor organization, SLRS's waiver request is made solely by the carrier. FRA recognizes that the intent of 49 U.S.C. 21108(a) is to ensure that covered service employees are provided meaningful input into any potential waiver of the HSL that would affect their work schedules. Accordingly, before considering the requested relief, FRA is requiring that within 30 days of the publication date of this notice, SLRS submit evidence to the docket demonstrating that it has sought employee input into the waiver request, what that employee input was, and that it has provided each covered employee affected by the request with a copy of the waiver petition, along with information on how to submit comments to FRA on the request. FRA will consider this additional information, along with all other relevant factors, in determining whether granting the requested relief would be in the public interest and consistent with railroad safety.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2009–0068) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Issued in Washington, DC on August 18, 2009.

John Leeds,

Director, Office of Safety Analysis.

[FR Doc. E9–20428 Filed 8–24–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

SMS Rail Lines of New York (Waiver Petition Docket Number FRA–2009–0067)

The SMS Rail Lines of New York (SNY) seeks a waiver from compliance of certain provisions of the Federal hours of service law (49 U.S.C. Chapter 211; HSL). Specifically, SNY requests relief from 49 U.S.C. 21103(a)(4) which states that a train employee may not be required or allowed to remain or go on duty after that employee has initiated an on-duty period each day for 6 consecutive days, unless that employee has had at least 48 hours off duty at the employee's home terminal.

SNY currently has three train employees and is not unionized and not subject to any collective bargaining agreements. These SNY train employees usually work 5 days per week.

However, the SNY petition states that when customer needs develop that would necessitate working a shift on the 6th day, these employees would be unable to return to duty without 48 hours off duty. SNY's request may be viewed at *http://www.regulations.gov* under the docket number listed above.

The HSL, at 49 U.S.C. 21108(a), contemplates that any request for a waiver from its requirements will be a joint waiver involving the relevant railroad carrier(s) and nonprofit employee labor organization(s) representing the class or craft of directly affected covered service employees. Because SNY's covered service employees are not represented by any employee labor organization, SNY's waiver request is made solely by the carrier. FRA recognizes that the intent of 49 U.S.C. 21108(a) is to ensure that covered service employees are provided meaningful input into any potential waiver of the HSL that would affect their work schedules. According, before considering the requested relief, FRA is requiring that within 30 days of the publication date of this notice, SNY submit evidence to the docket demonstrating that it has sought employee input into the waiver request, what that employee input was, and that it has provided each covered employee affected by the request with a copy of the waiver petition, along with information on how to submit comments to FRA on the request. FRA will consider this additional information, along with all other relevant factors, in determining whether granting the requested relief would be in the public interest and consistent with railroad safety.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2009–0067) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov*.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Issued in Washington, DC on August 18, 2009.

John Leeds,

Director, Office of Safety Analysis.

[FR Doc. E9–20427 Filed 8–24–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Red River Valley and Western Railroad Company

(Waiver Petition Docket Number FRA–2009–0056)

The Red River Valley and Western Railroad Company (RRV&W) seeks a waiver from compliance of certain provisions of the Federal hours of service law (49 U.S.C. Chapter 211; HSL). Specifically, RRV&W requests relief from 49 U.S.C. 21103(a)(4), which states that a train employee may not be required, allowed to remain, or go on duty after that employee has initiated an on-duty period each day for 6 consecutive days, unless that employee has had at least 48 hours off duty at the employee's home terminal.

RRV&W currently requires three Yard Foremen in its Breckenridge, Minnesota, facility to initiate an on-duty period in 6 consecutive days and return to duty without 48 hours off duty. The current RRV&W Yard schedule includes a Monday through Friday morning shift beginning at 6 a.m.; a Monday through Friday shift beginning at 1:30 p.m.; and a single weekend shift on each Saturday and Sunday at 7 a.m. The three Yard Foreman rotate through these assignments via 6 consecutive day starts in a manner that permits each Foreman working 6 days with one rest day. RRV&W maintains that the current schedule addresses the issue of fatigue through regular and highly predictable assignments, which provide a substantially safer environment and better quality of life for the group. RRV&W's entire petition may be viewed at *http://www.regulations.gov* under the docket number listed above.

The HSL, at 49 U.S.C. 21108(a), contemplates that any request for a waiver from its requirements will be a joint waiver involving the relevant railroad carrier(s) and nonprofit employee labor organization(s) representing the class or craft of directly affected covered service employees.

FRA understands that the covered service employees affected by RRV&W's waiver request are not represented by any employee labor organization, and accordingly, RRV&W's waiver request is made solely by the carrier. FRA recognizes that the intent of 49 U.S.C. 21108(a) is to ensure that covered service employees are provided meaningful input into any potential waiver of the HSL that would affect their work schedules. Accordingly, before considering the requested relief, FRA is requiring that within 30 days of the publication date of this notice, RRV&W submit evidence to the docket demonstrating that it has sought employee input into the waiver request, what that employee input was, and that it has provided each covered employee affected by the request with a copy of the waiver petition, along with information on how to submit comments to FRA on the request. FRA will consider this additional information, along with all other relevant factors, in determining whether granting the requested relief would be in the public interest and consistent with railroad safety.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2009–0056) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov*.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Issued in Washington, DC on August 18, 2009.

John Leeds,

Director, Office of Safety Analysis.

[FR Doc. E9–20429 Filed 8–24–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Ellis & Eastern Company (Waiver Petition Docket Number FRA–2009–0071)

The Ellis & Eastern Company (EEC) seeks a waiver from compliance of certain provisions of the Federal hours of service law (49 U.S.C. Chapter 211; HSL). Although EEC requests waiver relief from the requirements of Title 49 CFR 228.19, FRA believes EEC's intent was to request relief from U.S.C. § 21103(a)(4), and is therefore processing the EEC's request as such. Section 21103(a)(4) states that a train employee may not be required or allowed to remain or go on duty after that employee has initiated an on-duty period each day for 6 consecutive days, unless that employee has had at least 48 hours off duty at the employee's home terminal.

EEC currently has 6 train employees who typically work two assignments (0600 and 0700) Monday through Saturday, with an occasional Sunday assignment during peak periods. EEC's request may be viewed at *http://www.regulations.gov* under the docket number listed above.

The HSL, at 49 U.S.C. 21108(a), contemplates that any request for a waiver from its requirements will be a joint waiver involving the relevant railroad carrier(s) and nonprofit employee labor organization(s) representing the class or craft of directly affected covered service employees. FRA understands that the covered service employees affected by EEC's waiver request are not represented by any employee labor organization, and accordingly, EEC's waiver request is made solely by the carrier. FRA recognizes that the intent of 49 U.S.C. 21108(a) is to ensure that covered service employees are provided meaningful input into any potential waiver of the HSL that would affect their work schedules. Accordingly, before considering the requested relief, FRA is requiring that within 30 days of the publication date of this notice, EEC submit evidence to the docket demonstrating that it has sought employee input into the waiver request, what that employee input was, and that it has provided each covered employee affected by the request with a copy of the waiver petition, along with information on how to submit comments to FRA on the request. FRA will consider this additional information, along with all other relevant factors, in determining whether granting the requested relief would be in the public interest and consistent with railroad safety.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2009–0071) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.

• *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Issued in Washington, DC, on August 18, 2009.

John Leeds,

Director, Office of Safety Analysis.

[FR Doc. E9–20430 Filed 8–24–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5227

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5227, Split-Interest Trust Information Return.

DATES: Written comments should be received on or before October 26, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to Martha R. Brinson, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Evelyn J. Mack at (202) 622–7381, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Evelyn.J.Mack@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Split-Interest Trust Information Return.

OMB Number: 1545–0196.

Form Number: 5227.

Abstract: Form 5227 is used to report the financial activities of a split-interest trust described in Internal Revenue Code section 4947(a)(2), and to determine whether the trust is treated as a private foundation and is subject to the excise taxes under Chapter 42 of the Code.

Current Actions: Four additional entry spaces were added to incorporate a donation date which is essential to checking the calculation of the unitrust amount. In previous revisions the date was requested under question 55 on Page 3.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 115,000.

Estimated Time per Respondent: 128 hr., 20 min.

Estimated Total Annual Burden Hours: 14,759,100.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 17, 2009.

Martha R. Brinson,

IRS Reports Clearance Officer.

[FR Doc. E9–20349 Filed 8–24–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 97–33

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 97–33, Electronic Federal Tax Payment System (EFTPS).

DATES: Written comments should be received on or before October 26, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to Martha R. Brinson, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Evelyn J. Mack at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–7381, or through the Internet at *EvelynJ.Mack@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Federal Tax Payment System (EFTPS).

OMB Number: 1545–1546.

Revenue Procedure Number: Revenue Procedure 97–33.

Abstract: The Electronic Federal Tax Payment System (EFTPS) is an electronic remittance processing system for making Federal tax deposits (FTDs) and Federal tax payments (FTPs). Revenue Procedure 97–33 provides taxpayers with information and procedures that will help them to electronically make FTDs and tax payments through EFTPS.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, and Federal, State, local or tribal governments.

Estimated Number of Respondents: 557,243.

Estimated Average Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 278,622.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 17, 2009.

Martha R. Brinson,

IRS Reports Clearance Officer.

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16 CFR Part 318

Health Breach Notification Rule; Final Rule

FEDERAL TRADE COMMISSION

16 CFR Part 318

[RIN 3084-AB17]

Health Breach Notification Rule

AGENCY: Federal Trade Commission (FTC).

ACTION: Final Rule.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') is issuing this final rule, as required by the American Recovery and Reinvestment Act of 2009 (the ''Recovery Act'' or ''the Act''). The rule requires vendors of personal health records and related entities to notify consumers when the security of their individually identifiable health information has been breached.

DATES: This rule is effective September 24, 2009. Full compliance is required by February 22, 2010.

ADDRESSES: Requests for copies of the Final Rule and this Notice should be sent to: Public Records Branch, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, DC 20580. The public record of this proceeding is also available at that address. Relevant portions of the proceeding, including the Final Rule and this Notice, are available at *http//www.ftc.gov*.

FOR FURTHER INFORMATION CONTACT: Cora Tung Han or Maneesha Mithal, Attorneys, Division of Privacy and Identity Protection, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326-2252.

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I. Background

On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act of 2009 (the ''Recovery Act'' or ''the Act'') into law.[1] The Act includes provisions to advance the use of health information technology and, at the same time, strengthen privacy and security protections for health information.

Among other things, the Recovery Act recognizes that there are new types of web-based entities that collect consumers' health information. These entities include vendors of personal health records and online applications that interact with such personal health records (''PHRs'').[2] Some of these entities are not subject to the existing privacy and security requirements of the Health Insurance Portability and Accountability Act (''HIPAA'').[3] For such entities, the Recovery Act requires the Department of Health and Human Services (''HHS'') to study, in consultation with the FTC, potential privacy, security, and breach notification requirements and to submit a report to Congress containing recommendations within one year of enactment of the Recovery Act (the ''HHS report''). Until Congress enacts new legislation implementing such recommendations, the Recovery Act contains temporary requirements, to be enforced by the FTC, that such entities notify individuals in the event of a security breach. The final rule implements these requirements.

The Recovery Act also directs HHS to promulgate a rule requiring (1) HIPAA-covered entities, such as hospitals, doctors' offices, and health insurance plans, to notify individuals in the event of a security breach and (2) business associates of HIPAA-covered entities to notify such HIPAA-covered entities in the event of a security breach.[4] HIPAA-covered entities and entities that engage in activities as business associates of HIPAA-covered entities will be subject only to HHS' rule and not the FTC's rule, as explained further below.

II. Overview of the Recovery Act, Proposed Rule, and Comments Received

The Recovery Act requires ''vendors of personal health records'' and ''PHR related entities,'' as defined below, to notify their customers of any breach of unsecured, individually identifiable health information. Further, a third party service provider of such vendors or entities that experiences a breach must notify such vendors or entities of the breach, so that they can in turn notify their customers. The Act contains specific requirements governing the timing, method, and contents of the breach notice to consumers. For example, it requires entities to provide breach notices ''without unreasonable delay,'' and in no case later than 60 calendar days after discovering a breach; it requires notice to consumers by first-class mail or, if specified as a preference by the individual, by email; and it requires substitute notice, through the media or a web posting, if there is insufficient contact information for ten or more individuals. In addition, the Act requires the FTC to adopt a rule implementing the breach notification requirements applicable to vendors of personal health records, PHR related entities, and third party service providers within 180 days of enactment of the Act. It also authorizes the FTC to seek civil penalties for violations.

The Recovery Act contains a similar scheme for HIPAA-covered entities, to be enforced by HHS. HIPAA-covered entities must notify individuals whose ''unsecured protected health information'' is breached. If a business associate of a HIPAA-covered entity experiences a security breach, it must notify the HIPAA-covered entity, which must in turn notify individuals.

To fulfill the Recovery Act requirements, on April 20, 2009, the Commission issued a Notice of Proposed Rulemaking (''NPRM''). The proposed rule contained in the NPRM adhered closely to the requirements of the Recovery Act.[5] The Commission received approximately 130 comments.[6] Some general comments are summarized below, and an analysis of comments addressing particular sections of the proposed rule follows.

First, commenters that addressed the issue generally agreed that FTC and HHS should work together to ensure that their respective breach notification rules are harmonized and that stakeholders know which rule applies to which entity.[7] Some of these commenters recognized that some entities that operate in different roles may be subject to both rules, and that

[1] American Recovery & Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009).

[2] In general, personal health records are online repositories of health information that individuals can create to track their medical visits, prescription information, etc. The terms ''vendor of personal health records'' and ''personal health records'' are defined terms in the FTC's rule; thus, in some instances, the term ''personal health record'' is not abbreviated.

[3] Health Insurance Portability & Accountability Act, Pub. L. No. 104-191, 110 Stat. 1936 (1996).

[4] The Recovery Act requires HHS to issue its rule within 180 days of enactment of the Recovery Act. Sec. 13402(j).

[5] 74 FR 17,914.

[6] Comments are available at (*http://www.ftc.gov/os/comments/healthinfobreach/index.shtm*). The Commission also reviewed the comments HHS received in response to its Request for Information on its forthcoming breach notification rule. 74 FR 19,006. However, the specific comments addressed in this Notice are those that were filed in response to the FTC's NPRM.

[7] *See, e.g.*, American Council of Life Insurers (''ACLI'') at 1; American Benefits Council (''ABC'') at 2; American Insurance Association (''AIA'') at 1; Center for Democracy & Technology, Markle Foundation, Childbirth Connection, Health Care for All, National Partnership for Women & Families, SEIU (hereinafter ''CDT/Markle'') at 4-5; Dossia at 5; HealthITNow.org at 1-2; National Association of Chain Drug Stores (''NACDS'') at 4; WebMD at 3.

it is therefore important for the rules to be similar.[8] The Commission agrees and has consulted with HHS to harmonize the two rules, within the constraints of the statutory language. Further, as explained below, for some entities subject to both the HHS and FTC rules, compliance with certain HHS rule requirements shall be deemed compliance with the corresponding provisions of the FTC's rule.

A second and related point that many commenters raised was that, to the extent possible, consumers should receive a single notice for a single breach.[9] These commenters pointed out that receiving multiple notices for the same breach would confuse consumers and convey an exaggerated sense of risk.[10] Receiving a barrage of notices also could cause consumers to become numb to such notices, so that they may fail to spot or mitigate the risks being communicated to them.[11] Some commenters noted that consumers could receive multiple notices because of inadvertently overlapping requirements between HHS and FTC rules.[12] As described below, the Commission has taken steps to ensure that its rule does not overlap with HHS' and that consumers do not receive multiple notifications.

Third, several commenters raised privacy and security concerns about PHRs generally.[13] For example, one commenter asked the FTC to establish comprehensive privacy and security standards, and supported the creation of a private right of action for a violation of these standards.[14] The Commission notes that, although general privacy and security issues are beyond the scope of the current rulemaking, the Commission will take these comments into account when it provides input on the HHS report described above.

Fourth, several individual commenters expressed concerns about electronic health records in general.[15] Some of these commenters questioned the cost-savings that would result;[16] others strongly supported patients' right to opt out of such records.[17] In response, the Commission notes that this rule addresses only breach notification with respect to PHRs voluntarily created by individuals; it does not address electronic health records more generally, such as those created for patients by hospitals or doctors' offices.[18]

Finally, many commenters expressed concerns about particular statutory requirements governing breach notification. For example, some commenters stated that entities should be required to provide breach notification for paper, as well as electronic, information;[19] others expressed concerns about requiring media notice.[20] Because these requirements come directly from the language of the Recovery Act, the Commission cannot change its final rule in response to these comments. Nevertheless, the Commission will take these comments into account when it provides input on the HHS report.

III. Section-by-Section Analysis

Section 318.1: Purpose and Scope

Proposed section 318.1 set forth the relevant statutory authority for the proposed rule; stated that the proposed rule would apply to vendors of personal health records, PHR related entities, and third party service providers; and clarified that the proposed rule would not apply to HIPAA-covered entities or to an entity's activities as a business associate of a HIPAA-covered entity. The Commission received several comments on this section as follows.

A. Application of Rule to Non-Profits and Other Entities Beyond the FTC's Traditional Jurisdiction

In its NPRM, the Commission noted that the proposed rule applied to entities beyond the FTC's traditional jurisdiction under section 5 of the FTC Act, such as non-profits (*e.g.*, educational institutions, charities, and 501(c)(3) organizations), because the Recovery Act does not limit the FTC's enforcement authority to its enforcement jurisdiction under section 5. Indeed, section 13407 of the Recovery Act expressly applies to ''vendors of personal health records and other non-HIPAA covered entities,'' without regard to whether such entities fall within the FTC's jurisdiction under section 5.

The Commission received several comments in support of this requirement. One commenter stated that it was reasonable for the FTC's rule to apply to non-profits.[21] Another commenter suggested applying the rule to as broad a range of entities as possible.[22] Yet another commenter stated that the rule should apply to all entities that handle PHRs.[23] Thus, the Commission retains its interpretation and modifies the proposed rule to clarify that it applies to vendors of personal health records and PHR related entities, ''irrespective of any jurisdictional tests in the Federal Trade Commission Act.''[24]

B. Application of the FTC's Rule to HIPAA-Covered Entities and Business Associates of HIPAA-Covered Entities

As noted above, the Commission received many comments about the need to harmonize the HHS and FTC rules to simplify compliance burdens and create a level-playing field for HIPAA and non-HIPAA covered entities.[25] Several commenters agreed with the statements in the FTC's NPRM that (1) HIPAA-covered entities should be subject to HHS' breach notification rule and not the FTC's rule; and (2) business associates of HIPAA-covered entities should be subject to HHS' breach notification rule, but only to the extent they are acting as business associates.[26] Accordingly, the FTC adopts as final the provision that the rule ''does not apply to HIPAA-covered entities, or to any other entity to the extent that it engages in activities as a business associate of a HIPAA-covered entity,'' but provides further guidance in response to specific comments received on the issue.

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[8] *See, e.g.*, HealthITNow.org at 2; WebMD at 3.

[9] *See, e.g.*, American Legislative Exchange Council (''ALEC'') at 6; HealthITNow.org at 2; Software Information Industry Association (''SIIA'') at 3; Statewide Parent Advocacy Network, Inc. at 1; United Health Group (''UHG'') at 2.

[10] *See, e.g.*, ALEC at 7; HealthITNow.org at 2.

[11] *See, e.g.*, Blue Cross/Blue Shield at 4; SIIA at 6-7.

[12] *See, e.g.*, American Health Information Management Association (''AHIMA'') at 2; American Medical Association (''AMA'') at 2.

[13] *See, e.g.*, Electronic Privacy Information Center (''EPIC'') at 11; Flagler, Hoerl, Hosler.

[14] EPIC at 11.

[15] *See, e.g.*, Blair, Coon, Flagler.

[16] *See, e.g.*, Jones-Ford, Rogalski, Serich,

[17] *See, e.g.*, Amidei, Baxter, Blair, Coon.

[18] Section 13400(5) of the Recovery Act defines ''electronic health record'' as an electronic record of health-related information on an individual that is ''created, gathered, managed, and consulted by authorized health care clinicians and staff.'' In contrast, section 13400(11) defines ''personal health record'' as an electronic record ''on an individual that can be drawn from multiple sources and that is managed, shared, and controlled by or primarily for the individual.''

[19] *See, e.g.*, IDExperts at 1-2; National Association for Information Destruction (''NAID'') at 3-4, Ohio State University Medical Center at 1, Statewide Parent Advocacy Network, Inc. at 2.

[20] *See, e.g.*, IDExperts at 2-3; Identity Theft 911 at 3.

[21] CDT/Markle at 14-15.

[22] IDExperts at 1.

[23] *See, e.g.*, EPIC at 3.

[24] The rule will not apply to federal agencies. The Commission notes that federal agencies already follow breach reporting requirements established by the Office of Management and Budget (''OMB''). *See* OMB Memorandum for the Heads of Executive Departments and Agencies re Safeguarding Against and Responding to the Breach of Personally Identifiable Information, May 22, 2007, available at (*http://www.whitehouse.gov/OMB/memoranda/fy2007/m07-16.pdf*).

[25] *See* supra note 7.

[26] *See, e.g.*, Dossia at 5; UHG at 2; WebMD at 2.

1. Application of the FTC's Rule to HIPAA-Covered Entities

Although the FTC's proposed rule made clear that it did not apply to HIPAA-covered entities, one medical association urged the Commission to exclude doctors explicitly from the FTC rule, even if they are involved with PHRs.[27] The Commission agrees that, because health care providers such as doctors are generally HIPAA-covered entities, the FTC's rule does not apply to them in such capacity. Thus, if a doctor's medical practice offers PHRs to its patients, neither the doctor nor the medical practice is subject to the FTC's rule.[28] However, if the doctor creates a PHR in a personal capacity, there may be circumstances under which the FTC's rule would apply. For example, a non-practicing doctor may create and offer PHRs to the public as part of a start-up business venture. In this circumstance, the doctor is not acting in his or her capacity as a HIPAA-covered entity, and thus, the FTC's rule would regulate the PHRs.

In addition, one commenter asked whether the FTC's rule would cover PHRs that a HIPAA-covered entity offers to its employees.[29] Because the FTC's rule does not apply to HIPAA-covered entities, it does not apply to PHRs that such entities offer their employees. However, if a HIPAA-covered health care provider or group health plan offers PHRs to employees because they also are patients of such health care provider or enrollees of such group health plan, then HHS' rule would apply to the PHRs.

2. Application of the FTC's Rule to Business Associates of HIPAA-Covered Entities

In its NPRM, the Commission recognized that, in many cases, business associates of HIPAA-covered entities that also offer PHRs to the public could be subject to both the HHS and FTC breach notification rules. If they experience a breach, they could be required to provide direct breach notification to their individual customers under the FTC's rule. At the same time, under HHS' rule, they could be required to notify HIPAA-covered entities to whom they provide services, so that the HIPAA-covered entities could in turn notify individuals. In some cases, as discussed further below, this potential overlap could lead to consumers' receiving multiple notices for the same breach.

The Commission asked for examples of vendors of personal health records that may have a dual role as a business associate of a HIPAA-covered entity and as a direct provider of PHRs to the public, and how the rule should address such a dual role. Commenters provided several useful examples,[30] all of which the Commission believes can be addressed within the framework provided in the rule. Most commenters that addressed the issue stated, and the Commission agrees, that regardless of the circumstances, consumers should receive a single breach notice for a single breach.[31] In addition, the Commission agrees with the commenters that stated that the breach notice should come from the entity with whom the consumer has a direct relationship.[32] Indeed, the Commission believes that consumers are more likely to pay attention to a notice provided by an entity known to the consumer, and that consumers may ignore or discard notices provided by unknown entities.[33]

For these reasons, it may be desirable in some circumstances for a vendor of personal health records to provide notice directly to consumers even when the vendor is serving as a business associate of a HIPAA-covered entity. For example, a consumer that obtained a PHR through a HIPAA-covered entity may nevertheless deal directly with the PHR vendor in managing his or her PHR account, and would expect any breach notice to come from the PHR vendor. Similarly, where a vendor of personal health records has direct customers and thus is subject to the FTC's rule, and also provides PHRs to customers of a HIPAA-covered entity through a business associate arrangement, it may be appropriate for the vendor to provide the same notice to all such customers. In the latter situation, the Commission believes that the vendor of personal health records should be able to comply with one set of rule requirements—those promulgated by HHS—governing the timing, method, and content of notice to consumers. Thus, in those limited circumstances where a vendor of personal health records (1) provides notice to individuals on behalf of a HIPAA-covered entity, (2) has dealt directly with these individuals in managing the PHR account, and (3) provides such notice at the same time that it provides an FTC-mandated notice to its direct customers for the same breach, the FTC will deem compliance with HHS requirements governing the timing, method, and content of notice to be compliance with the corresponding FTC rule provisions.[34]

Based on the comments received, the Commission has developed the following examples to illustrate situations of dual or overlapping coverage under the FTC and HHS rules.

a. Example 1: Vendor with a Dual Role as Business Associate and Provider of PHRs to the Public

PHR Vendor provides PHRs to the public through its own Web site. PHR Vendor also signs a business associate agreement with ABC Insurance (a HIPAA-covered entity) to offer PHRs to customers of ABC Insurance. ABC Insurance sends a message to its customers offering free PHRs through PHR Vendor and provides a link to PHR Vendor's Web site. Several patients of ABC Insurance choose to create PHRs through PHR Vendor. A hacker remotely copies the PHRs of all of PHR Vendor's users.

Under the FTC's rule, PHR Vendor is a vendor of personal health records that must provide breach notice to members of the public to whom it offers PHRs directly. It is not acting as a business associate to anyone in providing these PHRs. However, because it is acting as a business associate to ABC Insurance by providing PHRs for ABC Insurance's patients, it is not required to provide direct notice to ABC Insurance's customers under the FTC's rule. Rather, under the Recovery Act, in its capacity as a business associate, it must notify ABC Insurance so that ABC Insurance can in turn notify its customers.

PHR Vendor therefore must maintain a list of its own customers and a

[27] American Medical Association at 1-2.

[28] Some doctors or other health care providers, however, may not be HIPAA-covered entities because they do not participate in ''covered transactions'' under HIPAA regulations, such as submitting health care claims to a health plan. *See* 45 CFR 160.103. In such cases, these doctors or health care providers are subject to the FTC's rule if they offer PHRs or related services. Similarly, some commenters asked whether the FTC's rule applies to education records covered by the Family Educational Rights and Privacy Act (''FERPA''), 20 U.S.C. 1232g (*i.e.*, records of educational institutions such as public schools and universities). *See* Ohio State University Medical Center at 1; Statewide Parent Advocacy Network at 3-4. If school nurses or physicians' offices within these institutions are not HIPAA-covered entities, they are subject to the FTC's rule if they offer PHRs or related services.

[29] Ohio State University Medical Center at 1.

[30] *See, e.g.*, Dossia at 2-3; UHG at 3; WebMD at 3.

[31] *See* supra note 9.

[32] *See, e.g.*, CDT/Markle at 12; Dossia at 5.

[33] *See, e.g.*, Statement of Basis and Purpose, Affiliate Marketing Rule, 72 FR 62910 (Nov. 7, 2007) (requiring that opt-out notices come from entity with whom the consumer has a relationship).

[34] For direct customers, the vendor of personal health records still must comply with all other FTC rule requirements, including the requirement to notify the FTC within ten business days after discovering the breach. The Commission notes also that the above analysis would apply equally to a PHR related entity, as defined below, that deals directly with the public and acts as a business associate in providing services.

separate list of ABC Insurance's customers so that it can fulfill its obligations under the Recovery Act to provide notice to its own customers, as well as a separate notice to ABC Insurance. If PHR Vendor has similar business associate agreements with other entities, it must maintain separate customer lists for each such entity.

In this example, however, because PHR Vendor has a direct relationship with all of the individuals affected by the breach (including the patients of ABC Insurance), PHR Vendor may contract with ABC Insurance to notify individuals on ABC Insurance's behalf.[35] The Commission encourages such contractual arrangements because they would (1) satisfy both PHR Vendor's and ABC Insurance's obligation to notify individuals; (2) ensure that consumers receive a single notice from an entity with whom they have a direct relationship; and (3) simplify the notification process so that PHR Vendor can provide direct notice to those affected at the same time.[36]

b. Example 2: Addressing Portable PHRs

As in Example 1, PHR Vendor offers PHRs directly to the public. It also offers PHRs to enrollees of various health insurance companies, including ABC Insurance and XYZ Insurance, through business associate agreements with those companies. Sally is a patient of ABC Insurance. ABC Insurance offers Sally the use of PHR Vendor's product, and Sally creates her PHR. Years later, Sally moves, changes jobs, switches to XYZ Insurance, and keeps her PHR with PHR Vendor. If PHR Vendor's records are breached at this point, under HHS' rule, PHR Vendor, as a business associate of XYZ Insurance, must notify XYZ Insurance that Sally's record has been breached, and XYZ Insurance must provide Sally with a breach notice. Alternatively, if Sally had moved to an insurance company with whom PHR Vendor did not have a business associate agreement, PHR Vendor would not be subject to HHS' rule with respect to Sally; it must treat her as its own customer and provide Sally with breach notice directly.

In this scenario, PHR Vendor has an additional obligation to address the potential portability of PHRs. To fulfill such obligation, PHR Vendor must maintain lists tracking which customers belong to which HIPAA-covered entity, and must update such information regularly. Without such an updating system, PHR Vendor might keep Sally on its list of ABC Insurance's customers, but when Sally leaves ABC Insurance, that company may no longer have an obligation to notify her of a breach, and she may never receive a notice.[37] Alternatively, if PHR Vendor does not properly update its customer lists, Sally potentially could receive up to three notices—one from PHR Vendor, one from ABC Insurance, and one from XYZ Insurance.

As in Example 1, the Commission encourages vendors like PHR Vendor to include provisions in their business associate agreements stating that they will send breach notices on behalf of the entities to whom they are providing business associate services. In Example 2, such a contractual provision would simplify the notification process; it also may help avoid a situation in which consumers like Sally, who may move around frequently, receive multiple notices, or even worse, no notice.

c. Example 3: PHRs Offered to Families

Sally is employed by ABC Widgets, which has a HIPAA-covered group health plan. ABC Widgets' group health plan offers PHRs to employees and employees' spouses through PHR Vending, a business associate of ABC Widgets' group health plan. Sally gets a PHR; her husband John is separately insured, but he decides to get a PHR through PHR Vending as well. If PHR Vending experiences a breach, Sally may get a notice from ABC Widgets' group health plan under HHS' rule, and John must get a notice from PHR Vending under the FTC's rule. Alternatively, ABC Widgets and PHR Vending may, through their business associate agreement, choose to have PHR Vending send breach notices to all customers, as explained above.

C. Application of the FTC's Rule to Entities Outside the United States

One commenter suggested that the Commission clarify whether its rule applies to foreign businesses that have U.S. customers.[38] The Commission agrees and has determined that foreign entities with U.S. customers must provide breach notification under U.S. laws. Accordingly, it adds language to the final rule stating that it ''applies to foreign and domestic vendors of personal health records, PHR related entities, and third party service providers . . . that maintain information of U.S. citizens or residents.''

The Recovery Act supports this interpretation. Section 13407(e) of the Act states that a violation of the FTC's breach notification provisions ''shall be treated as an unfair and deceptive act or practice in violation of a regulation under section 18(a)(1)(B) of the Federal Trade Commission Act. . .'' Section 18(a)(1)(B) allows the Commission to issue regulations that define ''with specificity acts or practices which are unfair or deceptive acts or practices'' under the FTC Act.[39] The term ''unfair or deceptive acts or practices'' is in turn defined to include those acts or practices ''in foreign commerce'' that ''cause or are likely to cause reasonably foreseeable injury within the United States'' or ''involve material conduct occurring within the United States.''[40] Thus, the Recovery Act's references to the ''unfair or deceptive acts or practices'' section of the FTC Act, which has extraterritorial reach, supports the interpretation that the FTC's rule applies to foreign vendors of personal health records, related entities, as well as third party service providers, to the extent that they deal with U.S. consumers.

D. Preemption of State Law

Several commenters discussed state breach notification requirements that could potentially conflict with the FTC's rule requirements.[41] Several of these commenters raised concerns that such conflicting requirements could increase compliance burdens on businesses.[42] Some also raised concerns that entities would be required to send consumers multiple notices to comply with both state laws and the FTC's rule.[43]

The Commission notes that, under section 13421 of the Recovery Act, the preemption standard set forth in section 1178 of the Social Security Act, 42 U.S.C. 1320d-7 applies also to the FTC's rule. That section, which contains the preemption standard for HIPAA and its implementing regulations, states that federal requirements supersede any

[35] PHR Vendor still must comply with the Recovery Act requirement to notify ABC Insurance of the breach.

[36] As explained above, if PHR Vendor were to send individual notices on behalf of ABC Insurance, it could send all of its breach notices, including notices to its direct customers, in accordance with HHS rules requirements governing the timing, method, and content of notice.

[37] PHR Vendor's failure to send Sally a notice in this situation would constitute a violation of the FTC's rule.

[38] World Privacy Forum at 1-2.

[39] 15 U.S.C. 57a.

[40] 15 U.S.C. 45.

[41] *See, e.g.*, America's Health Insurance Plans (''AHIP'') at 7; AIA at 1; Dossia at 10-11; Molina Healthcare at 5-6; NACDS at 3-4; National Association of Mutual Insurance Companies (''NAMIC'') at 7-8; SIIA at 2-3; Sonnenschein at 1-2; UHG at 9-12; WebMD at 5-7.

[42] *See, e.g.*, AIA at 1; Dossia at 10; Molina Healthcare at 5-6.

[43] *See, e.g.*, AHIP at 8; AIA at 2.

contrary provision of State law.[44] To clarify that the same standard applies here, the Commission has added language to the final rule stating that, ''[t]his Part preempts state law as set forth in section 13421 of the American Recovery and Reinvestment Act of 2009.''

The Commission notes that the final rule preempts only *contrary* state laws. Under HHS regulations implementing the preemption standard of section 1178 of the Social Security Act, a state law is contrary to federal requirements (1) if it would be impossible to comply with both state and federal requirements or (2) if state law ''stands as an obstacle to the accomplishment and execution of the full purposes and objectives'' of the federal requirements.[45] Under this standard, the Commission's rule does not preempt state laws imposing additional, as opposed to contradictory, breach notification requirements. For example, some State laws require breach notices to include advice on monitoring credit reports; others require contact information for consumer reporting agencies; yet others require the notice to include advice on reporting incidents to law enforcement agencies. Even though these content requirements are different from those contained in the FTC's rule, entities may comply with both state laws and the FTC rule by setting forth all of the information required in a single breach notice.[46] In these circumstances, because it is possible to comply with both laws, and the state laws do not thwart the objectives of the federal law,[47] there is no conflict between state and federal law.

Section 318.2: Definitions

(a) Breach of security

The proposed rule defined ''breach of security'' as the acquisition of unsecured PHR identifiable health information[48] of an individual in a personal health record without the authorization of the individual.[49] The Commission adopts this portion of the definition of breach of security without modification. Examples of unauthorized acquisition include the theft of a laptop containing unsecured PHRs; the unauthorized downloading or transfer of such records by an employee; and the electronic break-in and remote copying of such records by a hacker.

The proposed rule also contained a rebuttable presumption for unauthorized *access* to an individual's data: It stated that, when there is unauthorized access to data, unauthorized acquisition will be presumed unless the entity that experienced the breach ''has reliable evidence showing that there has not been, or could not reasonably have been, unauthorized acquisition of such information.'' The presumption was intended to address the difficulty of determining whether access to data (*i.e.*, the opportunity to view the data) did or did not lead to acquisition (*i.e.*, the actual viewing or reading of the data). In these situations, the Commission stated that the entity that experienced the breach is in the best position to determine whether unauthorized acquisition has taken place.

In describing the rebuttable presumption, the Commission provided several examples. It noted that no breach of security has occurred if an unauthorized employee inadvertently accesses an individual's PHR and logs off without reading, using, or disclosing anything. If the unauthorized employee read the data and/or shared it, however, he or she ''acquired'' the information, thus triggering the notification obligation in the rule.

Similarly, the Commission provided an example of a lost laptop: If an entity's employee loses a laptop in a public place, the information would be accessible to unauthorized persons, giving rise to a presumption that unauthorized acquisition has occurred. The entity can rebut this presumption by showing, for example, that the laptop was recovered, and that forensic analysis revealed that files were never opened, altered, transferred, or otherwise compromised.

The Commission received numerous comments on the rebuttable presumption. Several commenters supported it.[50] Others stated that the standard articulated by the Commission is too broad and instead should require breach notification only when there is a risk of harm.[51] Several of these commenters stated that the Commission's proposed standard would result in consumers' being inundated with breach notices.[52] In contrast, consumer groups expressed concern that the Commission was giving too much discretion to companies, which could easily claim that unauthorized access did not give rise to unauthorized acquisition.[53] Several commenters also requested further guidance on how the rebuttable presumption would work in specific instances.[54]

After considering the comments received, the Commission has decided to adopt the rebuttable presumption as part of the definition of breach of security, without modification. In response to the comments suggesting that the Commission require notification only if there is a risk of harm, the Commission notes that its standard does take harm into account. Indeed, notification would not be required in a case where an entity can show that although an unauthorized employee accidentally opened a file, it was not viewed, and therefore there has been no harm to the consumer.

The Commission notes that harm in the context of health information may be different from harm in the context of financial information. As one commenter stated, ''[w]ith a breach of financial records, a consumer faces a significant headache, but ultimately can have their credit and funds restored; this is not the case with health records. A stigmatizing diagnosis, condition or prescription in the wrong hands can cause irreversible damage and discrimination.''[55] Because health information is so sensitive, the Commission believes the standard for notification must give companies the appropriate incentive to implement policies to safeguard such highly-sensitive information.

With respect to commenters' concerns about the possibility of consumers' being inundated with breach notifications, the Commission believes

[44] Section 1178 also sets forth some exceptions to this standard, none of which applies here. Of most relevance, one exception states that federal requirements will not necessarily preempt contrary state laws that, ''subject to section 264(c)(2)'' of HIPAA, relate to the ''privacy of individually identifiable health information.'' Although the FTC's rule relates to ''privacy of individually identifiable health information,'' HHS interprets this exception as applying only to the HIPAA Privacy Rule, because it is the sole regulation promulgated under section 264(c)(2) of HIPAA.

[45] *See* 45 CFR 160.202.

[46] The rule does not require entities to send multiple notices to comply with state and federal law.

[47] For a discussion of the issue of federal preemption when state laws frustrate federal objectives, *see Wyeth v. Levine*, 129 S. Ct. 1187 (2009).

[48] The phrase ''PHR identifiable health information'' is defined below.

[49] Several of the rule provisions refer to information ''in a personal health record.'' Because a personal health record often includes information in transit, as well as stored information, the Commission interprets the phrase ''in a personal health record'' to include data in motion and data at rest.

[50] *See, e.g.,* AHIMA at 3; IDExperts at 1; NAID at 2; NAMIC at 3; Statewide Parent Advocacy Network, Inc., at 2, World Privacy Forum at 6-7.

[51] *See, e.g.,* AIA at 2, Blue Cross/Blue Shield at 3; National Community Pharmacists Association at 2; SIIA at 4-7; UHG at 3-5; WebMD at 4.

[52] *See, e.g.,* Blue Cross/Blue Shield at 4; SIIA at 6-7.

[53] *See, e.g.,* CDT/Markle at 8-9; EPIC at 5.

[54] *See, e.g.,* AHIP at 2; IDExperts at 1; Intuit at 2; Molina Healthcare at 2.

[55] *See* Patient Privacy Rights at 6.

that its standard strikes the right balance. Given the highly personal nature of health information, the Commission believes that consumers would want to know if such information was read or shared without authorization. In addition, the danger of overnotification may be overstated. For example, where there has been unauthorized access to a database leading to the acquisition of specific consumers' data, a vendor or entity need not notify all consumers whose information appears in that database; it only needs to notify those specific consumers whose data was acquired.

Nevertheless, the Commission agrees that further guidance would be useful to entities in assessing whether unauthorized acquisition has taken place as a result of unauthorized access. This further guidance should also allay consumer groups' concerns that businesses have too much discretion in making this determination. Commenters posed several scenarios, which the Commission addresses here.

First, one commenter noted that companies should not have to delve into the state of mind of employees who accessed data to determine whether they viewed, read, memorized, or shared such data.[56] The Commission agrees and notes that, in a case of inadvertent access by an employee, no breach notification is required if (1) the employee follows company policies by reporting such access to his or her supervisor and affirming that he or she did not read or share the data, and (2) the company conducts a reasonable investigation to corroborate the employee's version of events.

Second, some commenters asked if unauthorized acquisition has taken place when a PHR is accessible on the Internet through an obscure Web site.[57] The Commission believes that it would be very difficult to overcome the presumption that unauthorized acquisition has taken place in this scenario. In fact, because the Internet is accessible to hundreds of millions of people around the world, it is not generally reasonable to assume that the information available on the Internet was not acquired. The presumption of unauthorized acquisition could likely only be overcome if there was forensic evidence showing that the page was not viewed.

Third, and similar to the example above, if an employee sends a mass email containing an individual's unsecured PHR identifiable health information accidentally, and the employee immediately recalls the message, the Commission believes that it is highly unlikely that the presumption can be overcome. In contrast to a situation in which an employee sends a single email and immediately asks the recipient to delete it, once hundreds of people have received an email, the Commission does not believe that there can be a reasonable expectation that no one ''acquired'' the information.[58]

On a related issue, the final rule provides that a breach of security means acquisition of information without the authorization ''of the individual.'' Some commenters raised questions about how the extent of individual authorization should be determined.[59] For example, if a privacy policy contains buried disclosures describing extensive dissemination of consumers' data, could consumers be said to have authorized such dissemination?

The Commission believes that an entity's use of information to enhance individuals' experience with their PHR would be within the scope of the individuals' authorization, as long as such use is consistent with the entity's disclosures and individuals' reasonable expectations. Such authorized uses could include communication of information to the consumer, data processing, or Web design, either in-house or through the use of service providers. Beyond such uses, the Commission expects that vendors of personal health records and PHR related entities would limit the sharing of consumers' information, unless the consumers exercise meaningful choice in consenting to such sharing. Buried disclosures in lengthy privacy policies do not satisfy the standard of ''meaningful choice.''[60] The Commission will examine this issue further when providing input on the HHS report.

(b) Business associates and (c) HIPAA-covered entities

Proposed paragraph (b) defined ''business associate'' to mean a business associate under HIPAA, as defined in 45 CFR 160.103. That regulation, in relevant part, defines a business associate as an entity that handles the protected health information of a HIPAA-covered entity and (1) provides certain functions or activities on behalf of the HIPAA-covered entity or (2) provides ''legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services to or for'' the HIPAA-covered entity. Proposed paragraph (c) defined ''HIPAA-covered entity'' to mean a covered entity under HIPAA, as defined in 45 CFR 160.103. That regulation provides that a HIPAA-covered entity is a health care provider that conducts certain transactions in electronic form, a health care clearinghouse (which provides certain data processing services for health information), or a health plan. The Commission adopts these definitions without modification.

(d) Personal health record

Proposed paragraph (d) defined a ''personal health record'' as an ''electronic record of PHR identifiable health information on an individual that can be drawn from multiple sources and that is managed, shared, and controlled by or primarily for the individual.'' The FTC adopts this definition without modification.[61]

Several commenters urged the FTC to cover paper records, as well as electronic records.[62] Although the Commission agrees that breaches of data in paper form can be as harmful as breaches of such data in electronic form, the plain language of the Recovery Act compels the Commission to issue a rule

[56] *See, e.g.,* SIIA at 5.

[57] *See* NAID at 2; Patient Privacy Rights at 4-5.

[58] *See In the Matter of Eli Lilly & Co.*, Docket No. C-4047 (May 8, 2002) (settlement of action in which FTC alleged that company failed to maintain reasonable security; employee inadvertently had sent mass email revealing customers' sensitive health information).

[59] *See, e.g.*, CDT/Markle at 10; International Pharmaceutical Privacy Consortium at 2; SIIA at 6.

[60] See, e.g., *In the Matter of Sears Management Holding Co.*, File No. 082 3099 (June 4, 2009) (accepted for public comment) (alleging that Sears' failure to adequately disclose its tracking activities violated the FTC Act, given that Sears only disclosed such tracking in a lengthy user license agreement, available to consumers at the end of a multi-step registration process); FTC Staff Report, ''Self-Regulatory Principles for Online Behavioral Advertising,'' Feb. 2009, (*http://www2.ftc.gov/os/2009/02/P085400behavadreport.pdf.*); FTC Publication, Dot Com Disclosures: Information About Online Advertising at 5 (May 2000), available at (*http://www.ftc.gov/bcp/edu/pubs/business/ecommerce/bus41.pdf*) (''Making [a] disclosure available. . . so that consumers who are looking for the information might find it doesn't meet the clear and conspicuous standard. . . [D]isclosures must be communicated effectively so that consumers are likely to notice and understand them.'') (emphasis in original); see also FTC Policy Statement on Deception, appended to In the Matter of Cliffdale Assocs., Inc., 103 F.T.C. 110, 174 (1984), available at (*http://www.ftc.gov/bcp/policystmt/ad-decept.htm*) (fine print disclosures not adequate to cure deception).

[61] In response to comments received, the Commission emphasizes that PHRs are managed, shared, and controlled ''by or primarily for the individual.'' *See, e.g.*, AIA at 2; ACLI; Molina Healthcare at 2-3; National Association of Mutual Insurance Companies (''NAMIC'') at 3-4. Thus, they do not include the kinds of records managed by or primarily for commercial enterprises, such as life insurance companies that maintain such records for their own business purposes.

[62] *See supra* note 19.

covering only electronic data.[63] The Commission will examine this issue further when providing input on the HHS report to Congress.

(e) PHR identifiable health information

Proposed paragraph (e) defined ''PHR identifiable health information'' as '''individually identifiable health information,' as defined in section 1171(6) of the Social Security Act (42 U.S.C. 1320d(6)),[64] and with respect to an individual, information (1) that is provided by or on behalf of the individual; and (2) that identifies the individual or with respect to which there is a reasonable basis to believe that the information can be used to identify the individual.'' The Commission adopts this definition without change.

In its NPRM, the Commission noted three points with respect to this definition. First, it stated that the definition of ''PHR identifiable health information'' includes *the fact of* having an account with a vendor of personal health records or related entity, where the products or services offered by such vendor or related entity relate to particular health conditions.[65] The Commission retains this interpretation.

Second, the Commission noted that the proposed rule would cover a security breach of a database containing names and credit card information, even if no other information was included. Several commenters pointed out that this approach was not supported by the statutory language of the Recovery Act, which defines ''PHR identifiable health information'' to include information that relates to payment only ''for the provision of health care to an individual.'' These commenters noted that providing PHRs to consumers does not constitute the ''provision of health care to an individual.''[66] The Commission is persuaded that name and credit card information alone is not PHR identifiable health information. However, as noted above, if the disclosure of credit card information identifies an individual as a customer of a vendor of personal health records or related entity associated with a particular health condition, that information would constitute ''PHR identifiable health information.''[67]

Third, the Commission stated that, if there is no reasonable basis to believe that information can be used to identify an individual, the information is not ''PHR identifiable health information,'' and breach notification need not be provided. The Commission also stated that, if a breach involves information that has been ''de-identified'' under 45 CFR 164.514(b),[68] the Commission will deem that information to fall outside the scope of ''PHR identifiable health information'' and therefore not covered by the rule. 45 CFR 164.514(b) states that data is ''de-identified'' (1) if there has been a formal, documented analysis by a qualified statistician that the risk of re-identifying the individual associated with such data is ''very small,'' or (2) if specific identifiers about the individual, the individual's relatives, household members, and employers (including names, contact information, birth date, and zip code) are removed, and the covered entity has no actual knowledge that the remaining data could be used to identify the individual. The Commission also requested examples of other instances where, even though the standard for de-identification under 45 CFR 164.514(b) is not met, there is no reasonable basis to believe that information is individually identifiable.

The Commission received numerous comments on this issue. Some commenters supported the Commission's proposal that ''de-identified'' data not be deemed ''PHR identifiable health information.''[69] Others rejected this standard as not sufficiently protective of consumers because, in some instances, even ''de-identified'' data can be tracked back to an individual.[70]

One commenter requested that the FTC similarly state that ''limited data sets'' under HIPAA are not ''PHR identifiable health information.''[71] Under HIPAA's Privacy Rule, HIPAA-covered entities may use ''limited data sets'' for research, public health, or health care operations without individual authorization, as long as contracts govern the use of such data. ''Limited data sets'' do not include names, addresses, or account numbers; they can, however, include an individual's city, town, five-digit zip code, and date of birth.[72] Another commenter urged the FTC to state that, if information has been ''redacted, truncated, obfuscated, or otherwise pseudonymized,'' there is no reasonable basis to believe that the information can be used to identify the individual.[73] Indeed, several commenters noted that mandating notification for breaches of data that does not include individual identifiers would require re-identification of individuals associated with such data, the process of which would expose their information to new security risks.[74]

With respect to ''de-identified'' data and ''limited data sets,'' commenters provided empirical evidence on the likelihood that such data could be combined with other data to identify individuals. For example, several commenters cited to the research of Dr. LaTanya Sweeney of Carnegie Mellon University, which showed that .04% of the population could be re-identified by combining a ''de-identified'' data set with other public data.[75] In addition, Dr. Bradley Malin, Director of the Health Information Privacy Laboratory of Vanderbilt University, estimated that, using a ''limited data set,'' 68.4% of the population was re-identifiable.[76] Thus, it appears that the risk of re-identification of a ''limited data set'' is exponentially greater than the risk of re-identification of ''de-identified'' data.

Based on the comments received, the Commission affirms that ''de-identified'' data will not be deemed to be ''PHR identifiable health information.'' Given the small risk that such data will be re-identified by unauthorized third parties, the Commission believes that the data would be more vulnerable if entities were required to re-identify these consumers solely to provide breach notification. Thus, de-identified data under HHS rules will not constitute ''PHR identifiable health information,''

[63] *See Pinero v. Jackson Hewitt Tax Service, Inc.*, 594 F. Supp. 2d 710, 716-17 (E.D. La. 2009) (dismissing plaintiff's claim alleging breach of paper records under Louisiana data breach notification law because that law covers only a breach of ''computerized'' data).

[64] This provision defines ''individually identifiable health information'' as information that ''(1) is created or received by a health care provider, health plan, employer, or health care clearinghouse; and (2) relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.''

[65] For example, the theft of an unsecured customer list of a vendor of personal health records or related entity directed to AIDS patients or people with mental illness would require breach notification, even if no specific health information is contained in that list.

[66] *See, e.g.*, Intuit at 2; MasterCard at 1-3; SIIA at 10, Dossia at 6-7.

[67] The Commission also notes that, depending on the circumstances, the failure to secure name and credit card information could constitute a violation of section 5 of the FTC Act. *See* (*http://www.ftc.gov/privacy/privacyinitiatives/promises_enf.html*.)

[68] This standard, which appears in the HIPAA Privacy Rule, creates an exemption to that Rule.

[69] *See, e.g.,* Columbia University at 2; NACDS at 2.

[70] CDT/Markle at 7-8; EPIC at 6-8; Patient Privacy Rights at 5-6.

[71] Minnesota Department of Health at 3.

[72] 45 CFR 164.514(e). De-identified data sets cannot contain even this information, unless a qualified statistician determines that such information, when combined with other data, would present a ''very small'' risk of re-identification.

[73] SIIA at 9-10.

[74] *See, e.g.*, iGuard at 2; Quintiles at 2-3.

[75] CDT/Markle at 7; Columbia University at n. 6; World Privacy Forum at 8.

[76] Health Information Privacy Laboratory at Vanderbilt University at 1.

and therefore, if such data is breached, no notification needs to be provided. On the other hand, the Commission declines to adopt a blanket statement that ''limited data sets'' are not ''PHR identifiable health information'' because the risk of re-identification is too high. The Commission similarly declines to state that ''redacted, truncated, obfuscated, or otherwise pseudonymized data'' does not constitute ''PHR identifiable health information'' because the risk of re-identification will depend on the context.

Even if a particular data set is not ''de-identified,'' however, entities still may be able to show, in specific instances, that there is no reasonable basis to identify individuals whose data has been breached, and thus, no need to send breach notices. For example, consider a Web site that helps consumers manage their medications. The Web site collects only email addresses, city, and medication information from consumers, but it keeps email addresses secured in accordance with HHS standards[77] and on a separate server. It experiences a breach of the server containing the city and medication information (but no email addresses). A hacker obtains medication information associated with ten anonymous individuals, who live in New York City. In this situation, the Web site could show that, even though a city is revealed, thus preventing the data from being categorized as ''de-identified,'' there is no reasonable basis for identifying the individuals, and no breach notification needs to be provided.

(f) PHR related entity

Proposed paragraph (f) defined the term ''PHR related entity'' as an entity that (1) offers products or services through the Web site of a vendor of personal health records; (2) offers products or services through the Web sites of HIPAA-covered entities that offer individuals PHRs; or (3) ''accesses information in a personal health record or sends information to a personal health record.''[78] The definition did not include HIPAA-covered entities or other entities acting as business associates of HIPAA-covered entities. The Commission adopts this definition without modification.

Several commenters raised questions about the first two categories. In particular, these commenters raised the question of whether the phrase ''offers products or services through'' a PHR Web site includes advertisers.[79] In its NPRM, the Commission had stated that PHR related entities would include ''a web-based application that helps consumers manage medications; a Web site offering an online personalized health checklist; and a brick-and-mortar company advertising dietary supplements online.'' The Commission affirms that such entities are PHR related entities, but notes that they are only subject to the rule's breach notification requirements if they experience a breach of ''unsecured PHR identifiable health information'' in a ''personal health record.''[80] Thus, if they do not collect unsecured PHR identifiable health information at the Web site offering PHRs, they will not be subject to the rule's breach notification requirements.[81]

One commenter stated that search engines appearing on PHR Web sites should be considered PHR related entities. This commenter noted that including such search engines within the rule's scope is important because consumers may search for particular health conditions, and many search engines track individually identifiable information, such as the contents of previous searches, IP addresses, and cookies.[82] In response, the Commission notes that search engines are PHR related entities if they appear on PHR Web sites, and are subject to the rule's breach notification requirements if they collect unsecured PHR identifiable information at those Web sites.[83]

(g) State

New paragraph (g) defines the term ''State'' as ''any of the several States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa and the Northern Mariana Islands.'' This paragraph is identical to section 13400(15) of the Recovery Act and was added for reasons explained below, in the discussion of notice to the media.

(h) Third party service provider

Paragraph (g) of the proposed rule defined the term ''third party service provider'' as ''an entity that (1) provides services to a vendor of personal health records in connection with the offering or maintenance of a personal health record or to a PHR related entity in connection with a product or service offered by that entity; and (2) accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, uses, or discloses unsecured PHR identifiable health information as a result of such services.'' The Commission retains the definition of ''third party service provider'' without modification in the final rule and re-designates this paragraph as paragraph (h). Third party service providers include, for example, entities that provide billing, debt collection, or data storage services to vendors of personal health records or PHR related entities.

(i) Unsecured

Paragraph (h) of the proposed rule defined the term ''unsecured'' as ''not protected through the use of a technology or methodology specified by the Secretary of Health and Human Services in the guidance issued under section 13402(h)(2) of the American Recovery and Reinvestment Act of 2009.'' It further provided that, if such guidance is not issued by the date specified in such section, the term unsecured ''shall mean not secured by a technology standard that renders PHR identifiable health information unusable, unreadable, or indecipherable to unauthorized individuals and that is developed or endorsed by a standards developing organization that is accredited by the American National Standards Institute.'' The Commission has removed the alternative definition from the final rule because HHS has already issued the required guidance under the Recovery Act.[84] The

[77] As noted below, the Recovery Act requires notification only if ''unsecured'' data has been breached, with the term ''unsecured'' to be defined by HHS. HHS issued guidance on the term ''unsecured'' on April 17, 2009. *See* 74 FR 19,006. The above example assumes the email addresses are secured in accordance with such guidance.

[78] An entity that ''accesses information in a personal health record or sends information to a personal health record'' includes online applications through which individuals connect their blood pressure cuffs, blood glucose monitors, or other devices so that they can track the results through their PHRs. It also includes online medication or weight tracking programs that pull information from PHRs.

[79] *See, e.g.,* SIIA at 10; World Privacy Forum at 5.

[80] *See* Recovery Act, 13407(f)(1).

[81] A consumer who clicks on an advertisement on the PHR Web site may be taken to the advertiser's own site, where the advertiser may collect the consumer's data. To avoid consumer confusion, and potentially deception, the advertiser should provide clear and conspicuous notice that the consumer is leaving the PHR Web site and that the advertiser's privacy policy will now govern the collection of the consumer's data.

[82] World Privacy Forum at 4. For further discussion of privacy issues raised in this context, *see* FTC Staff Report, ''Self-Regulatory Principles for Online Behavioral Advertising,'' Feb. 2009, (*http://www2.ftc.gov/os/2009/02/P085400behavadreport.pdf*).

[83] Several commenters asked the Commission to clarify that an individual, such as a family member that accesses information in a relative's PHR, is not a PHR related entity. *See, e.g.,* CDT/Markle at 6; UHG at 5. The Commission agrees that a family member who accesses information in a consumer's PHR with the consumer's authorization is not a PHR related entity.

[84] *See supra* note 77.

Commission also has re-designated this paragraph as paragraph (i).

(j) Vendor of personal health records

Paragraph (i) of the proposed rule defined the term ''vendor of personal health records'' to mean ''an entity, other than a HIPAA-covered entity or an entity to the extent that it engages in activities as a business associate of a HIPAA-covered entity, that offers or maintains a personal health record.'' The Commission retains this definition as proposed and re-designates it as paragraph (j).

Proposed section 318.3: Breach notification requirement

Paragraph 318.3(a) of the proposed rule required vendors of personal health records and PHR related entities, upon discovery of a breach of security, to notify U.S. citizens and residents whose information was acquired in the breach and to notify the FTC. The Commission retains this paragraph in the final rule without modification.

Paragraph 318.3(b) of the proposed rule required third party service providers of vendors of personal health records and PHR related entities to provide notification to such vendors and entities following the discovery of a breach. The purpose of this requirement is to ensure that the vendor or entity receiving the breach notification is aware of the breach, so that it can in turn provide its customers with a breach notice. To further this purpose, proposed paragraph 318.3(b) required that the third party service provider's notification include ''the identification of each individual'' whose information ''has been, or is reasonably believed to have been acquired during such breach.'' The proposed paragraph also required third party service providers to provide notice to a senior official of the vendor or PHR related entity and to obtain acknowledgment from such official that he or she has received the notice. The Commission received several comments on paragraph 318.3(b), in response to which the Commission is making some changes to the final rule provision.

First, one commenter noted that a third party service provider may be unaware that it is dealing with a vendor of personal health records. For example, a cloud computing service provider[85] may offer computing power and storage without knowing whether customers use them to offer PHRs.[86] The Commission agrees with this comment and, accordingly, adds the following sentence to paragraph 318.3(b): ''For purposes of ensuring implementation of this requirement, vendors of personal health records and PHR related entities shall notify third party service providers of their status as vendors of personal health records or PHR related entities subject to this Part.''

Second, one commenter noted that some third party service providers may have multiple vendors of personal health records as clients.[87] If the third party service provider experiences a breach, it should not be required to identify every individual whose information was breached to each of its clients, regardless of whether the individual is a customer of the client. This could result in the third party service providers' sharing customer lists with competing vendors of PHRs, and could undermine the privacy of such customers. The Commission agrees. Thus, instead of requiring the third party service provider to identify each ''individual'' whose information was breached, the Commission's final rule requires the service provider to identify each ''customer of the vendor of personal health records or PHR related entity'' whose information was breached.[88]

Third, several commenters supported the idea of having a specified official to whom the third party service provider would provide a breach notice.[89] However, some commenters stated that businesses should themselves agree upon these contact persons through their contractual arrangements.[90] The Commission agrees and amends the proposed rule to allow third party service providers to provide notice to ''an official designated in a written contract by the vendor of personal health records or the PHR related entity to receive such notices, or, if such a designation is not made, to a senior official. . .'' Because the purpose of this provision is to provide an efficient process for notifying consumers, the contact points designated by contract should be appropriate decisionmakers with sufficient responsibility and authority to oversee the process of notifying consumers. In designating an official, the parties also must consider that particular officials may move within the organization or leave altogether. Thus, it is important to establish a reliable mechanism for updating the designation when any such change occurs.

Fourth, the Commission received comments on the proposed rule's requirement that the third party service provider obtain an acknowledgment of receipt of notice. Some commenters suggested that the third party service provider should merely retain evidence that notice was sent and that such evidence could be an email successfully sent or a certified mail receipt. These commenters expressed concern that requiring acknowledgment could delay sending of prompt notification to consumers.[91] The Commission has not adopted this change. Even if the third party service provider retains evidence that someone signed for a package or opened an email, the communication may not have reached the intended recipient, particularly in a large, busy office. For example, in the case of a senior official, an assistant may open his or her email or a receptionist may sign for a package, but the senior official may never receive the communication. Moreover, the Commission does not believe that the requirement to acknowledge receipt will delay notice; the acknowledgment merely adds a check to ensure that the right person will learn of the breach, and could be provided in the form of a simple return email.

Finally, paragraph 318.3(c) of the proposed rule provided that a breach ''shall be treated as discovered as of the first day on which such breach is known to a vendor of personal health records, PHR related entity, or third party service provider, respectively (including any person, other than the individual committing the breach, that is an employee, officer, or other agent of such vendor of personal health records, PHR related entity, or third party service provider, respectively) or should reasonably have been known to such vendor of personal health records, PHR related entity, or third party service provider (or person) to have occurred.''

[85] Cloud computing is the provision of Internet-based computer services. Cloud computing provides businesses and consumers with access to software, data storage, and infrastructure services that are hosted remotely.

[86] Microsoft at 3.

[87] SIIA at 9.

[88] Some commenters raised the question of what would happen if a third party service provider did not have enough information to identify the individuals affected by the breach. *See, e.g.,* iGuard at 2; Quintiles at 2-3, SIIA at 8-9. In such case, the Commission expects that the third party service provider would provide the vendor or related entity with as much information as it has, after a thorough search of its records. Because the vendor or related entity has ultimate responsibility to provide individuals with notice, and likely possesses more comprehensive information regarding such individuals, the vendor or related entity must then take the data provided by the third party service provider and identify those individuals to whom notice must be provided.

[89] *See, e.g.,* AHIMA at 3, Statewide Parent Advocacy Network at 3.

[90] *See, e.g.*, NACDS at 2; SIIA at 9.

[91] AHIP at 5-6; Molina Healthcare at 4; UHG at 5.

Some commenters expressed confusion about this standard and asked for clarification about when an employee's knowledge should be imputed to an employer.[92] The Commission interprets the Recovery Act as requiring that an employee's knowledge be imputed to the employer. To clarify this point, the Commission modifies this provision to state that a breach ''shall be treated as discovered as of the first day on which such breach is known or reasonably should have been known to the vendor of personal health records, PHR related entity, or third party service provider, respectively. Such vendor, entity, or third party service provider shall be deemed to have knowledge of a breach if such breach is known, or reasonably should have been known, to any person, other than the person committing the breach, who is an employee, officer, or other agent of such vendor of personal health records, PHR related entity, or third party service provider.'' The Commission notes that a third party service provider may, in some cases, be an agent of a vendor of personal health records or PHR related entity; thus, when such a third party service provider discovers a breach, that knowledge would be imputed to the vendor or entity.[93]

Section 318.4 Timeliness of Notification

Paragraph 318.4(a) of the proposed rule required that breach notifications to individuals and the media be ''sent without unreasonable delay and in no case later than 60 calendar days after the discovery of a breach of security.'' The Commission has modified this provision to clarify that the timeliness requirements apply to all notifications required to be provided under the rule, other than notification to the FTC.[94] Thus, the provision now states that all notifications required ''under §§ 318.3(a)(1), 318.3(b), and 318.5(b)'' shall be sent without unreasonable delay.

Paragraphs 318.3(c) and 318.4(a) must be read together, with paragraph 318.3(c) establishing the time of ''discovery'' of the breach as the starting point for calculating the 60 day time period set forth in paragraph 318.4(a). The Commission received several comments with respect to the timing of notification. For example, one commenter asked whether an entity must establish that a breach involves ''PHR identifiable health information'' before the 60 day time period starts.[95] Another commenter requested guidance on the timing requirements if an entity determines that a breach affected a certain number of individuals and then later, perhaps close to the date it planned to send notices, realizes that the breach has affected more individuals.[96]

In response to these comments, the Commission notes two points. First, an entity need not establish all the pre-requisites for triggering breach notification before the 60 day time period starts. Thus, for example, once an entity learns of possible unauthorized access to data, it cannot wait to conduct further investigation to determine whether unauthorized acquisition has occurred, whether PHR identifiable health information has been breached, or whether the information breached was unsecured. The purpose for the 60 day period is to give entities time to conduct such an investigation—the time period does not start when the investigation is complete.

Second, the standard for determining timeliness is reasonableness. The breach has been ''discovered'' at the point when an entity reasonably should have known about it. The ''reasonableness'' standard applies equally with respect to the number of individuals affected. For example, if a breach affects 1,000 individuals, and the entity reasonably should have known that the breach affected all of these individuals on day 1, then the 60 day time period expires on calendar day 60. If, however, the entity undertook reasonable efforts to identify those affected by the breach and, despite such efforts, identified only 400 individuals on day 1 and the remaining 600 individuals on day 50, it is reasonable to take some additional time to send notices to the second round of 600 individuals. Because the entity already has information about the breach, however, it is probably not reasonable for the entity to wait an additional 60 days from the date it learned of these additional affected individuals to provide the notification.[97]

Paragraph 318.4(b) of the proposed rule stated that vendors of personal health records, PHR related entities, and third party service providers have the burden of proving that they provided the appropriate breach notifications. The Commission adopts the proposed paragraph without change.

Paragraph 318.4(c) of the proposed rule provided that ''[i]f a law enforcement official determines that a notification, notice, or posting required under this Part would impede a criminal investigation or cause damage to national security, such notification, notice, or posting shall be delayed'' in the same manner as ''45 CFR 164.528(a)(2). . .'' The Commission adopts this proposed paragraph without modification.

Section 318.5 Methods of Notice

Section 318.5 of the proposed rule addressed the methods of notice to individuals, the Commission, and the media in the event of a breach of security of unsecured PHR identifiable health information.

Individual Notice

Proposed paragraph (a)(1) stated that an individual must be given notice by first-class mail or, if the individual provides express affirmative consent, by email. The paragraph also provided for notification to next of kin if the individual is deceased. Several commenters expressed concerns about the proposed paragraph.

First, although a few commenters supported requiring express affirmative consent for email notification,[98] the majority of commenters that addressed

[92] *See, e.g.,* Intuit at 3; Minnesota Department of Health at 4.

[93] In addition, as noted in the NPRM, the Commission expects entities that collect and store unsecured PHR identifiable health information to maintain reasonable security measures, including breach detection measures, which should assist them in discovering breaches in a timely manner. If an entity fails to maintain such measures, and thus fails to discover a breach, the resulting failure to provide the appropriate breach notification could constitute a violation of the proposed rule because the entity ''reasonably'' should have known about the breach. The Commission recognizes, however, that certain breaches may be very difficult to detect, and that an entity with strong breach detection measures may nevertheless fail to discover a breach. In such circumstances, the failure to discover the breach would not constitute a violation of the proposed rule.

[94] As noted in the NPRM, the standard for timely notification is ''without unreasonable delay,'' with the 60 day time period serving as an outer limit. Thus, in some cases, it may be an ''unreasonable delay'' to wait until the 60th day to provide notification. For example, if a vendor of personal health records or PHR related entity learns of a breach, gathers all necessary information, and has systems in place to provide notification within 30 days, it would be unreasonable to wait until the 60th day to send the notice. Similarly, there may be circumstances where a vendor of personal health records discovers that its third party service provider has suffered a breach before the service provider notifies the vendor that the breach has occurred. Indeed, as noted in the text, if the third party service provider is an agent of a vendor of personal health records or PHR related entity, that service provider's knowledge of the breach will be imputed to the vendor of personal health records or PHR related entity. In such circumstances, the vendor should begin taking steps to address the breach immediately, and should not wait until receiving notice from the service provider.

[95] Columbia University at 2-3.

[96] UHG at 6.

[97] As described below, the entity must provide notice to the FTC within ten business days of learning that the breach affected 500 people.

[98] *See, e.g.,* IDExperts at 3; AHIMA at 4.

the issue opposed it.[99] Several of these commenters noted, as the Commission did in its NPRM, that email notice is particularly well-suited to the online relationship between consumers and vendors of personal health records and PHR related entities.[100] They also noted that entities may not wish to collect—and consumers may not wish to provide—mailing addresses.[101] Indeed, several business commenters noted that they do not collect consumers' mail addresses, and that, if the Commission's proposed requirement became final, they would need to request additional personal information from consumers that these consumers might not choose to share. These businesses also expressed uncertainty on how to proceed if existing consumers did not respond to such a request.[102]

The Commission is persuaded that, because the relationships contemplated among vendors of personal health records, PHR related entities, and consumers take place entirely online, email notice is an appropriate default option. The Commission agrees with the commenters that stated that requiring express affirmative consent for email would result in entities' collecting additional personal information they otherwise would not collect, and that consumers may not want to provide.

However, the rule must still follow the Recovery Act, which requires that entities can only send notice by email ''if specified as a preference by the individual.'' The Commission interprets this phrase as requiring entities to provide consumers with a meaningful choice to receive email notice. For a choice to be meaningful, the entity must provide clear and conspicuous notice to consumers that they have such a choice. Thus, entities may not merely state in their terms and conditions that they will send relevant notices by email unless an individual objects.

Entities can, however, provide meaningful choice by sending their customers an email or posting an alert that appears when they access their account, which (1) informs them that they will receive breach notices by email, and (2) provides them with a reasonable opportunity to express a preference to receive such notices by first-class mail. The entity could provide such a ''reasonable opportunity'' by including a toll-free number, a return email address, or a link in the notice or alert allowing consumers to opt out of email notification and select first-class mail instead. The Commission would not consider requiring the consumer to write a letter as offering a reasonable opportunity to express such a preference. Entities choosing this approach also must inform consumers that, if they do not affirmatively make a choice, they will receive breach notices by email.

Accordingly, the Commission has adopted the following language into final paragraph 318.5(a)(1): ''Written notice, by first-class mail to the individual at the last known address of the individual, or by email, if the individual is given a clear, conspicuous, and reasonable opportunity to receive notification by first-class mail and the individual does not exercise that choice.''

Second, the Commission requested information on how to address the problem posed by some email notifications being screened by consumers' spam filters. One commenter suggested that the Commission require entities to verify receipt of breach notifications.[103] The Commission declines to adopt this suggestion because entities may be unable to verify receipt, particularly if verification requires some action by the consumer (such as a return email confirming receipt). This could leave entities no choice but to provide alternative notice, which could in turn result in consumers' receiving multiple notices for the same breach. Another commenter suggested that vendors of personal health records and PHR related entities should (1) notify individuals that breach notices may be blocked by spam filters and (2) provide them with guidance on how to set spam filter preferences to ensure they receive these notices.[104] The Commission agrees that entities who send breach notices by email should provide guidance to consumers regarding how properly to set up spam filters so that they will receive such notices.

Third, some commenters expressed concern about the requirement that breach notices be sent to an individual's next of kin if the individual is deceased.[105] One such commenter pointed out that consumers may not want their next of kin to know about their PHRs.[106] The Commission agrees, and accordingly modifies paragraph 318.5(a)(1) to read as follows: ''If the individual is deceased, the vendor of personal health records or PHR related entity that discovered the breach must provide such notice to the next of kin of the individual if the individual had provided contact information for his or her next of kin, along with authorization to contact them.''

Finally, the Commission received comments suggesting other forms of direct notice to individuals. One commenter suggested that breach notices be available in formats such as large font, Braille and audiotape.[107] Another commenter advocated the use of text messaging and social networking to notify individuals.[108] Some commenters suggested that entities provide consumers with non-avoidable notices directly into their accounts.[109] Section 13402(e)(1) of the Recovery Act requires that notification be provided via ''written notification by first-class mail'' or ''electronic mail.'' Because the rule must follow this mandate, none of the suggested alternative methods can replace mail or email. The Commission notes, however, that the rule does not preclude any of these forms of notice, and supports their use in appropriate circumstances, in addition to the forms of notice prescribed in the rule.

The Commission has changed the remainder of proposed paragraph (a). It has combined proposed paragraphs (a)(3) and (a)(4), addressing substitute notice to individuals, into a new paragraph (a)(2), to immediately follow the rule provision addressing direct notice to individuals. Proposed paragraph (a)(3) stated that if, after making reasonable efforts to contact an individual through his or her preferred method of communication, the vendor of personal health records or PHR related entity learns that such method is insufficient or out-of-date, the vendor or related entity shall attempt to provide the individual with a substitute form of actual notice, which may include written notice through the individual's less-preferred method, a telephone call, or other appropriate means. Proposed paragraph (a)(4) stated that if ten or more individuals cannot be reached, the vendor of personal health records or PHR related entity must provide substitute notice through its Web site home page or through the media.

[99] *See, e.g.,* ABC at 4; ACLI at 4-5; Association of Clinical Research Organizations (''ACRO'') at 5; Dossia at 9; HealthITNow.org at 2; iGuard at 2-3; Microsoft at 2; Quintiles at 3; SIIA at 11.

[100] *See, e.g.,* ABC at 4; ACRO at 5; Quintiles at 3; SIIA at 11.

[101] *See, e.g.,* HealthITNow.org at 2; Microsoft at 2.

[102] *See, e.g.,* iGuard at 2-3; Microsoft at 3.

[103] EPIC at 10.

[104] Identity Theft 911 at 3.

[105] *See, e.g.,* ACLI at 5; Minnesota Department of Health at 5.

[106] Minnesota Department of Health at 5.

[107] American Association of People with Disabilities at 2.

[108] EPIC at 9.

[109] *See, e.g.*, Healthcare Information and Management Systems Society at 2; World Privacy Forum at 6.

These proposed rule paragraphs prescribed a two step process for substitute notice: First, they required entities to provide a substitute form of actual notice (*e.g.,* the individual's less preferred method of actual notice, telephone, or other means) for all individuals for whom there was insufficient contact information. Second, if, after making this attempt to provide substitute actual notice, ''ten or more individuals [could] not be reached,'' the entity was required to provide notice through the home page of its Web site or through the media.

The final paragraph (a)(2) combines these paragraphs into one paragraph that prescribes substitute notice through media or web posting, if ''after making reasonable efforts to contact all individuals. . .the vendor of personal health records or PHR related entity finds that contact information for ten or more individuals is insufficient or out-of-date.'' The Commission has made this change for several reasons.

First, the proposed rule paragraphs had required that all entities attempt to provide substitute notice through the individual's less-preferred method of communication, a telephone call, or other appropriate means before providing substitute notice through media or web posting. Some commenters expressed concern about references to ''preferred'' and ''less preferred'' methods, suggesting that such language would require entities to track lists of consumers' preferences with respect to notice.[110] Other commenters stated that entities may collect only one form of contact information, usually email.[111] The Commission agrees that the rule should not refer to ''preferred'' or ''less-preferred'' or other methods of direct notice, particularly given that vendors of personal health records and PHR related entities may only collect email addresses and no other contact information from consumers. Because the Commission does not want to encourage entities to collect more contact information than is necessary, the rule no longer requires entities to contact individuals through another form of direct notice in every case.

Second, the proposed rule had required substitute notice ''if ten or more individuals cannot be reached.'' One commenter expressed concerns that the ''cannot be reached'' language requires confirmation of receipt.[112] The new paragraph makes clear that no such confirmation is required; rather, the rule requires ''reasonable efforts to contact all individuals.'' For example, in the case of incomplete contact information, reasonable efforts would include searching internal records and, if needed, undertaking additional reasonable efforts to obtain complete and accurate contact information from other sources. In addition, the standard, while not requiring confirmation, requires an entity to take reasonable steps to contact consumers by other practical, available means when it knows that the initial contact method has been unsuccessful. If the entity knows that an individual has not received such notice (*e.g.*, an email is returned as undeliverable), reasonable efforts would include (1) if the entity has the individual's mailing address, sending written notice to that address; or (2) if the entity has the individual's telephone number, calling the individual to obtain updated contact information for purposes of providing direct notice.[113]

Turning to the requirements for substitute notice through home page or media notice, the proposed rule allowed for (1) a conspicuous notice on the home page of the entity's Web site for a period of 6 months; or (2) notice in major print or broadcast media, including major media in geographic areas where the individuals affected by the breach reside. Such home page or media notice was required to include a toll-free phone number where an individual could learn whether the individual's information was included in the breach. The Commission received several comments on this paragraph.

First, one commenter expressed concern about the rule's requiring a toll-free number for individuals to determine whether their information was breached. This commenter noted the difficulties associated with authenticating callers over the telephone and recommended alternate approaches to letting consumers know if their information was breached.[114] Because the Recovery Act mandates the provision of a toll-free telephone number, the Commission declines to remove this requirement from the final rule. The Commission does, however, share the concerns expressed by commenters about how entities would authenticate callers to the toll-free line for the purposes of providing information specific to the caller. In particular, entities should not ask consumers who call the toll-free line for Social Security numbers or financial account numbers because requesting such information may raise concerns about ''phishing,'' or may even increase the risks of ''phishing.''[115] Entities also may choose to provide only general information to consumers who call the toll-free line and inform those consumers that they will send more specific information to the consumer's PHR or related account, or the email address they provided to set up their account.[116]

Second, with respect to posting on the home page,[117] most commenters that addressed the issue stated that the six month required posting period in the proposed rule was too long. These commenters generally suggested a shorter posting period, anywhere from 30 to 90 days.[118] Several of these commenters stated that a six month posting period could confuse or unduly alarm consumers every time they accessed the entity's web page.[119] Other commenters suggested that a requirement for a six month posting placed a burden on businesses that was not commensurate with the potential advantages to individuals.[120]

After reviewing the comments, the Commission has decided to change the time period for posting of the Web site notice in the final rule to ninety days.[121] The Commission believes that this time period is long enough to provide an effective form of substitute notice, while

[110] *See, e.g.,* ACLI at 5; NAMIC at 5.

[111] *See, e.g.*, iGuard at 2-3; Quintiles at 3.

[112] UHG at 6-7.

[113] *Cf. Jones v. Flowers*, 547 U.S. 220 (2006) (stating that the government's obligation to provide direct notice of foreclosure to taxpayer was not satisfied by sending a letter by certified mail, having it returned as unclaimed, and then posting the notice in the newspaper; another form of direct notice was required where possible and practicable).

[114] Microsoft at 5.

[115] For example, if such requests for information become customary and accepted, consumers may not be sufficiently cautious in responding to them.

[116] The final rule clarifies that the toll-free number must remain active for at least 90 days.

[117] As stated in the NPRM, individuals who already have accounts with vendors of personal health records may be directed to a first or ''landing'' page that is different from the home page to which non-account holders are directed. The Commission thus construes ''home page'' to include both the home page for new visitors and the landing page for existing account holders. In general, the Commission anticipates that, because PHRs generally involve an online relationship, web posting would be a particularly well-suited method of substitute notice to individuals.

[118] *See, e.g.*, ACLI at 5; ACRO at 5; Dossia at 10; iGuard at 3; NACDS at 3; NAMIC at 6; Minnesota Department of Health at 5; Ohio State University Medical Center at 2; Quintiles at 3-4; Sonnenschein at 3.

[119] *See, e.g.*, NACDS at 3; Ohio State University Medical Center at 2.

[120] *See, e.g.*, NAMIC at 6; Sonnenschein at 3.

[121] This 90 day period for web posting begins after entities have satisfied their notice obligation specified in paragraph (a)(1).

also avoiding unnecessary consumer confusion and alarm.[122]

Third, some commenters urged the Commission to interpret the requirement to provide media notice ''in major print or broadcast media'' to allow such notice through new technology, such as notice in major Internet media and news outlets.[123] One commenter argued that the Recovery Act requirement to provide notice in ''print or broadcast'' media should not be limited to print, radio, and television outlets because the term ''broadcast'' means making information known over a wide area.[124] Although the Commission recognizes the importance of the Internet as a medium, the Commission believes that the term ''broadcast media'' in the Recovery Act is limited to traditional radio and television news outlets. Indeed, if the Commission were to construe the term more broadly to include making information known over a wide area, the Recovery Act's reference to ''print'' media would be superfluous. Accordingly the Commission does not read the phrase ''print or broadcast media'' to include Internet media and news outlets.[125] However, the Commission encourages entities to provide notice through major Internet media, in addition to providing notice through print or broadcast media, if such additional notice would increase the likelihood of reaching affected consumers.

Fourth, some commenters asked how they could satisfy the requirement to provide media notice ''in geographic areas where the individuals affected by the breach likely reside'' if they do not collect address information.[126] The Commission believes that, if entities do know where individuals affected by the breach reside, they should target substitute media notice to those areas. If they do not know where individuals reside, they should notify media on a nationwide basis.[127] The Commission does not interpret the reference to where individuals ''likely reside'' as a requirement to collect address information from customers.[128]

Finally, proposed paragraph (a)(2) allowed a vendor of personal health records or PHR related entity to provide notice by telephone or other appropriate means, in addition to notice by first-class mail or email, if there is possible imminent misuse of unsecured PHR identifiable health information. The Commission adopts this language without change and has redesignated it as paragraph (a)(3) in the final rule.

Notice to Media if the Breach Affects 500 or More Individuals

Proposed paragraph 318.5(b) required media notice ''to prominent media outlets serving a State or jurisdiction'' if there has been a breach of security of ''unsecured PHR identifiable health information of 500 or more residents of such State or jurisdiction.'' This media notice differs from the substitute media notice described in paragraph 318.5(a)(4) in that it is directed ''to'' the media and is intended to supplement, but not substitute for, individual notice. The Commission has not made any substantive changes to this paragraph,[129] but clarifies two issues in response to comments received.

First, some commenters expressed confusion about the meaning of the phrase ''State or jurisdiction'' in this paragraph.[130] To clarify the phrase, and to track section 13400(15) of the Recovery Act, the Commission has added a definition of the word ''State'' to include ''any of the several States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Marinara Islands.'' In addition, the Commission interprets the term ''jurisdiction'' to mean a geographic area smaller than a state, such as a county, city, or town. This interpretation ensures that, if a breach affects such a specific area, the media notice will be targeted to that area. Accordingly, notice to media is required if a breach affects more than 500 individuals in a particular state, the District of Columbia, a territory or possession of the United States, or a smaller geographic subdivision.[131] If no single state has more than 500 people affected, notice to media is not required.

Second, as with substitute media notice, some commenters urged the Commission to interpret this paragraph to allow notification to prominent Internet-based media outlets.[132] Unlike the requirement to provide substitute notice in ''print or broadcast'' media described above, the Recovery Act does not limit this notice to particular types of media. Thus, an entity can satisfy the requirement to notify ''prominent media outlets'' under this paragraph by disseminating press releases to a number of media outlets, including Internet media in appropriate circumstances, where most of the residents of the relevant state or jurisdiction get their news. This will be a fact-specific inquiry that will depend upon what media outlets are ''prominent'' in the relevant jurisdiction.[133]

Notice to the Commission

Proposed paragraph 318.5(c) required vendors of personal health records and PHR related entities to notify the Commission as soon as possible and in

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[122] As stated in the NPRM, if an entity intends to use a hyperlink on the home page to convey the breach notice, the hyperlink should be (1) prominent so that it is noticeable to consumers, given the size, color and graphic treatment of the hyperlink in relation to other parts of the page; and (2) worded to convey the nature and importance of the information to which it leads. For example, ''click here'' would not be an appropriate hyperlink; a prominent ''click here for an important notice about a security breach that may affect you'' would be.

One commenter recommended that the Commission incorporate this guidance into the text of the final rule. AHIMA at 4. Given that new technologies may provide new ways to satisfy a requirement of ''conspicuousness'' and render old ways potentially obsolete, the Commission declines to incorporate its specific guidance regarding conspicuousness into the final text of paragraph 318.5(a)(4).

[123] CDT/Markle at 12-13; EPIC at 9-10.

[124] CDT/Markle at 13.

[125] As stated in the NPRM, the appropriate scope of substitute media notice will depend on several factors, including the number of individuals for whom no contact information can be obtained, the location of those individuals, if known, and the reach of the particular media used. For example, if a vendor of personal health records experiences a breach in which a hacker obtains the health records of millions of individuals nationwide, and the vendor has no contact information for these individuals, the notice should run multiple times in national print publications or on national network and cable television. In contrast, if an online weight management application loses a customer list and can reach all but 20 individuals in a particular city, it could run a more limited number of advertisements in appropriate local media. Further, a notice can only be ''reasonably calculated to reach the individuals affected'' under the rule if it is clear and conspicuous. Thus, the notices should be stated in plain language, be prominent, and run multiple times.

[126] AHIP at 5; Molina Healthcare at 3.

[127] The Commission notes that entities are never *required* to provide substitute notice to individuals through the media under this provision; they also have the option of providing notice through a home page posting.

[128] The proposed rule had required that media notice be ''reasonably calculated to reach the individuals affected by the breach.'' The Commission has moved this language to clarify that any form of substitute notice, including media notice and web page posting, must be ''reasonably calculated to reach the individuals affected by the breach.''

[129] However, the Commission has deleted the second sentence of the rule setting forth the content requirements for such notice as redundant.

[130] *See, e.g.*, Molina Healthcare at 4; NAMIC at 6.

[131] If an entity experiences a breach that affects more than 500 people in a city such as New York City, as well as more than 500 people elsewhere in the state, the entity has an obligation to provide notice to prominent media outlets both in New York City and New York state.

[132] CDT/Markle at 12-13; EPIC at 9-10.

[133] For example, an entity could satisfy this requirement by sending a press release to the relevant division or department (*e.g.*, health, technology, or business) of a number of prominent print publications, cable news shows, radio stations, and Internet news media outlets. The number of outlets and combination of media will vary, depending on the circumstances of the breach.

no case later than five business days if the breach involves the unsecured PHR identifiable health information of 500 or more individuals. If the breach involves the unsecured PHR identifiable health information of fewer than 500 individuals, the proposed paragraph allowed vendors of personal health records and PHR related entities, in lieu of immediate notice, to maintain a breach log and submit this log annually to the Commission. The proposed rule stated that the ''annual log'' would be due one year from the date of the entity's first breach. As described below, the Commission received a number of comments on this proposed paragraph and has made some modifications to the final rule in response.

First, the Commission received many comments objecting to the proposed paragraph's requirement that entities provide notice to the Commission no later than five business days after discovery of a breach affecting 500 or more individuals. These commenters argued that five business days did not allow sufficient time to conduct an investigation and might lead entities to report information to the Commission that later turns out to be incorrect.[134] The Commission agrees that a five day notice requirement could create burdens for companies without corresponding benefits, particularly if the shorter notice period results in false reporting of breaches. Thus, the Commission has decided to expand the time period for notice to the FTC from five business days to ten business days. The Commission believes that this time period still satisfies the Recovery Act's mandate that notice to the Commission be ''immediate,'' while allowing entities additional time to investigate the circumstances surrounding the breach before notifying the FTC.[135]

Second, several commenters recommended that the annual log to the Commission for breaches involving fewer than 500 individuals be submitted each calendar year, instead of one year from the date of the entity's first breach.[136] As a few commenters stated, calendar year reporting would allow the Commission to aggregate the number of breaches reported by all entities in a given year.[137] It also would simplify the process of reporting breaches by allowing organizations to prepare their logs systematically, with a fixed deadline.[138] The Commission agrees with these comments and has modified the final rule to allow for calendar year reporting as follows: ''If the breach involves the unsecured PHR identifiable health information of fewer than 500 individuals, the vendor of personal health records or PHR related entity may maintain a log of any such breach and submit such a log annually to the Federal Trade Commission within 60 calendar days following the end of the calendar year, documenting breaches from the preceding calendar year.'' [139]

Third, a few commenters made suggestions on how the Commission should collect and organize the notices it receives. One commenter recommended that the Commission create a comprehensive repository of information concerning data breaches.[140] Raising security concerns, one industry commenter recommended that the Commission designate a point person or office to receive notices by registered or express mail, and treat all such information as business confidential, not subject to release under the Freedom of Information Act (''FOIA'').[141] Other commenters encouraged the FTC to require entities not to report individually identifiable information.[142]

Consistent with these comments, the Commission has developed the attached form, which it will post at (*http://www.ftc.gov/healthbreach*), for vendors of personal health records or PHR related entities subject to the rule to complete for purposes of notifying the FTC when they discover a breach. The form's instructions require entities to print and send the form to a designated FTC official by courier or overnight mail. Due to security concerns associated with email transmission, the Commission will not accept emailed forms at this time. Also, the form instructs entities not to include consumers' personally identifiable information in their notice to the FTC.[143]

Until an entity sends a breach notice to consumers, the FTC will not routinely make public any information the entity provides to it on the breach notification form.[144] Once an entity sends a breach notice to consumers, however, the FTC will input the information it receives from the entity into a database that it will update periodically and make available to the public.

Section 318.6 Content of Notice

Proposed section 318.6 required that the breach notice to individuals include a brief description of how the breach occurred, including the date of the breach and the date of the discovery of the breach, if known; a description of the types of unsecured PHR identifiable health information that were involved in the breach; the steps individuals should take to protect themselves from potential harm; [145] a brief description of

[134] *See, e.g.*, AHIMA at 4-5; AHIP at 6; Dossia at 9; Microsoft at 4-5; Molina at 5; NACDS at 3; Sonnenschein at 2-3; UHG at 7-8; WebMD at 5.

[135] The Commission recognizes that entities may need more than ten business days to fully investigate the breach, and that the initial information provided to it in that time period may not be complete.

[136] *See, e.g.,* ACRO at 5; AHIP at 6-7; iGuard at 3-4; Minnesota Department of Health at 5; Molina Healthcare at 5; NAMIC at 7; Quintiles at 4; UHG at 8-9.

[137] *See, e.g.,* ACRO at 5; iGuard at 3-4; Quintiles at 4.

[138] *See, e.g.*, Minnesota Department of Health at 5; NAMIC at 7; UHG at 8-9.

[139] No annual log needs to be provided for years in which no breaches occur. In addition, for calendar year 2009, the regulated entity is only required to submit information to the FTC for breaches occurring after the effective date of this regulation.

[140] EPIC at 10.

[141] SIIA at 12.

[142] *See, e.g.*, AHIP at 7; Molina Healthcare at 5.

[143] Entities should begin using this form to provide notice to the Commission beginning on the effective date of this rule. However, pursuant to regulations of the Office of Management and Budget (''OMB''), the Commission will issue a separate **Federal Register** notice seeking comments on the form; based on comments received, the Commission may modify the form in the future.

[144] In response to a request under the Freedom of Information Act, however, the FTC may be required to disclose information provided on the form in response to a request from the public, unless the information contains confidential business information or other information exempt from public disclosure under that Act. 5 U.S.C. 552.

[145] As stated in the NPRM, the steps individuals should take to protect themselves from potential harm will differ depending on the circumstances of the breach and the type of PHR identifiable information involved. For example, if health insurance account information is compromised, the entity could suggest steps including, but not limited to, requesting and reviewing copies of medical files for potential errors; monitoring explanation of benefit forms for potential errors; contacting insurers to notify them of possible medical identity theft; following up with providers if medical bills do not arrive on time to ensure that an identity thief has not changed the billing address; and, in appropriate cases, trying to change health insurance account numbers.

If the breach also involves Social Security numbers, the entity should suggest additional steps such as placing a fraud alert on credit reports; obtaining and reviewing copies of credit reports for signs of identity theft; calling the local police or sheriff's office in the event suspicious activity is detected; and if appropriate, obtaining a credit freeze. In the case of a breach involving financial account numbers, the entity also should direct consumers to monitor their accounts for suspicious activity and contact their financial institution about closing any compromised accounts. In appropriate cases, the entity also could refer consumers to the FTC's identity theft Web site, (*http://www.ftc.gov/idtheft*).

In other instances, the likely harm will be personal embarrassment. In such cases, any steps that an individual may choose to take will likely be personal to that individual, and the entity may not be in a position to advise the consumer.

Continued

what the vendor of personal health records or PHR related entity involved is doing to investigate the breach, to mitigate any harm, and to protect against any further breaches; and contact procedures for individuals to ask questions or learn additional information.[146] In response to comments received, the Commission has made three changes to this section.

First, it has replaced references to mitigating ''losses'' from a breach with the term ''harm,'' to more precisely reflect that injury from a health-related breach is not restricted to economic loss.

Second, some commenters noted that the requirement that the notice contain ''a brief description of how the breach occurred'' might create unnecessary security risks by inadvertently providing a roadmap for future breaches. These commenters urged the Commission to track the language of the Recovery Act which requires ''a brief description of what happened.'' [147] The Commission is persuaded by these comments and modifies the language of 318.6(a) so that it reads as follows: ''a brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known.''

Finally, to ensure that notice be simple and non-technical so that individuals easily can understand the information being conveyed, the Commission has added language to this section mandating that the notice ''be written in plain language.'' In order to satisfy this requirement, entities should use clear language and syntax in their notices, and not include any extraneous material that might diminish the message they are trying to convey. In addition, entities should not include content beyond that required by law (including state law if the notice is designed to comply with both federal and state requirements), if such additional content could cause consumer confusion.

Sections 318.7, 318.8, 318.9: Enforcement, Effective Date, and Sunset

The Commission retains sections 318.7, 318.8, and 318.9 as proposed. With respect to the effective date of 30 days from publication of the final rule, however, at least one commenter expressed concern that such an effective date does not allow enough time to implement the processes and procedures necessary to comply with the FTC's rule.[148] Although the Commission does not have discretion to change the effective date of the rule because the Recovery Act establishes the effective date, which is mandated by the Recovery Act, it recognizes that entities may need to develop new procedures to comply with it. Therefore, the Commission will use its enforcement discretion to refrain from bringing an enforcement action for failure to provide the required notifications for breaches that are discovered before February 22, 2010. During this initial time period—after this rule has taken effect but before an entity is subject to an enforcement action—the Commission expects regulated entities to come into full compliance with the final rule.

IV. Paperwork Reduction Act

In conjunction with the NPRM, the FTC submitted the proposed rule and a Supporting Statement to the Office of Management and Budget (''OMB'') for review under the Paperwork Reduction Act (''PRA''). The breach notification requirements contained in the proposed rule constituted ''collections of information,'' which triggered the requirements of the PRA. In response, OMB filed a comment in accordance with 5 CFR § 1320.11(c). The comment indicated that OMB was withholding approval pending (1) the FTC's examination of the public comments in response to the NPRM, and (2) inclusion of a description in the preamble to the final rule of how it has maximized the practical utility of the collection of information and minimized the burden. In this section, the Commission (1) describes how it has maximized the practical utility of the final rule, and (2) sets forth a revised PRA analysis, taking into account both changes made to the proposed rule and comments received in response to its initial PRA analysis.

A. Practical Utility

According to OMB regulations, practical utility means the usefulness of information to or for an agency.[149] In determining whether information will have ''practical utility,'' OMB will consider ''whether the agency demonstrates actual timely use for the information either to carry out its functions or make it available to third-parties or the public, either directly or by means of a third-party or public posting, notification, labeling, or similar disclosure requirement, for the use of persons who have an interest in entities or transactions over which the agency has jurisdiction.'' [150]

The Commission has maximized the practical utility of the breach notification requirements contained in the final rule, consistent with the requirements of the Recovery Act. Under the final rule, consumers whose information has been affected by a breach of security will receive notice of it ''without unreasonable delay and in no case later than 60 calendar days'' after discovery of the breach.[151] Among other information, the notices must provide consumers with steps they can take to protect themselves from harm. Moreover, the breach notice requirements will encourage entities to safeguard the information of their customers, thereby potentially reducing the incidence of harm.

As provided by the Recovery Act, the final rule also requires entities to notify the Commission in the event of a security breach. The Commission has developed a form, which it will post at (*http://www.ftc.gov/healthbreach*), for entities subject to the rule to complete for this purpose. The form requests minimal information, mostly in the form of replies to check boxes; thus, entities will not require extensive time to complete it. At the same time, the form will provide a significant source of enforcement leads for the Commission. The Commission also will input the information it receives from entities into a database that it will update periodically and make available to the public. The publicly-available database will help businesses, the public, and policymakers. It will provide businesses with information about potential sources of data breaches, which will be particularly helpful to those setting up data security procedures. It will provide the public with information about the extent of data breaches. And it will help policymakers in developing breach notification requirements in non-health-related areas.

Thus, the final rule will have significant practical utility.

B. Explanation of Burden Estimates Under the Final Rule

The PRA burden of the final rule's requirements will depend on a variety of factors, including the number of covered firms; the percentage of such

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One commenter recommended that the Commission incorporate this guidance into the text of the final rule. AHIMA at 5. Because these steps will differ depending on the circumstances of the breach and in light of the variety of factual situations that may be involved, the Commission has not incorporated its specific guidance into the final text of section 318.6.

[146] In its NPRM, the Commission stated also that the breach notice should not include any requests for personal or financial information, which could raise concerns about phishing.

[147] *See, e.g.*, CDT/Markle at 11; SIIA at 13.

[148] Intuit at 3.

[149] 5 CFR 1320.3(l).

[150] *Id.*

[151] 16 CFR 318.4(a).

firms that will experience a breach requiring further investigation and, if necessary, the sending of breach notices; and the number of consumers notified.

In its initial PRA analysis, staff estimated that approximately 200 vendors of personal health records and 500 PHR related entities will be covered by the Commission's final rule. Thus, it estimated that a total of 700 entities will be required to notify consumers and the Commission in the event that they discover a breach. It also estimated that approximately 200 third party service providers will also be subject to the rule, and thus required to notify vendors of personal health records or PHR related entities in the event of a breach. Thus, staff estimated that a total of approximately 900 entities will be subject to the final rule's breach notification requirements. The staff retains these estimates without modification.

Staff estimated that these entities, cumulatively, will experience 11 breaches per year for which notification may be required. Because there is insufficient data at this time about the number and incidence of breaches in the PHR industry, staff used available data relating to breaches incurred by private sector businesses in order to calculate a breach incidence rate. Staff then applied this rate to the estimated total number of entities that will be subject to the final rule. According to one recent research paper, private sector businesses across multiple industries experienced a total of approximately 50 breaches per year during the years 2002 through 2007.[152] Dividing 50 breaches by the estimated number of firms that would be subject to a breach (4,187) [153] yields an estimated breach incidence rate of 1.2% per year. Applying this incidence rate to the estimated 900 vendors of personal health records, PHR related entities, and third party service providers yields an estimate of 11 breaches per year that may require notification of consumers and the Commission. The staff retains this estimate without modification.

To determine the annual PRA burden, staff developed estimates for three categories of potential costs: (1) the costs of determining what information has been breached, identifying the affected customers, preparing the breach notice, and making the required report to the Commission; (2) the cost of notifying consumers; and (3) the cost of setting up a toll-free number, if needed.

First, in order to determine what information has been breached, identify the affected customers, prepare the breach notice, and make the required report to the Commission, staff estimated that covered firms will require per breach, on average, 100 hours of employee labor at a cost of $4,652,[154] and the services of a forensic expert at an estimated cost of $2,930.[155] Thus, the cost estimate for each breach was $7,582. This estimate did not include the cost of equipment or other tangible assets of the breached firms, because they likely will use the equipment and other assets they have for ordinary business purposes. Based on the estimate that there will be 11 breaches per year, the annual cost burden for affected entities to perform these tasks was estimated to be $83,402 (11 breaches x $7,582 each).

The Commission received one comment suggesting that the staff's estimate of 100 hours of employee labor to determine what information has been breached, identify the affected customers, prepare the breach notice, and make the required notice to the Commission might be too low. This commenter noted that the analysis did not take into account the burden caused by compliance with potentially duplicative and conflicting state requirements.[156]

Staff has not altered its PRA burden analysis based on this comment. First, as discussed above, the final rule preempts any conflicting state law. Second, several of the potential costs or time burdens raised by the commenter, including those incurred to comply with preexisting, albeit duplicative state laws, or those associated with public relations and marketing, are not functions constituting a PRA ''collection of information.'' [157] Finally, although the Commission recognizes that certain entities may spend more than 100 hours regarding the above-noted tasks, staff's hours estimate is an average of the burden that would be incurred across small and large businesses experiencing various types of breaches.

The cost of breach notifications also will depend on the number of consumers contacted. Based on a recent survey, 11.6 percent of adults reported receiving a breach notification during a one-year period.[158] Staff estimated that for the prospective 3-year PRA clearance, the average customer base of all vendors of personal health records and PHR related entities will be approximately two million per year. Accordingly, staff estimated that an average of 232,000 consumers per year will receive a breach notification. Staff retains this estimate without modification.

Given the online relationship between consumers and vendors of personal health records and PHR related entities, staff stated that most notifications will be made by email and the cost of such notifications will be de minimis.[159]

In some cases, however, staff noted that vendors of personal health records and PHR related entities will need to notify individuals by postal mail, either because these individuals have asked

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[152] Sasha Romanosky, Rahul Telang & Alessandro Acquisti, ''Do Data Breach Disclosure Laws Reduce Identity Theft?'' Seventh Workshop on the Economics of Information Security, June 2008. The authors tallied the breaches reported to the Web site *Attrition.org* during the time period 2002 to 2007 and counted a total of 773 breaches for a range of entities, including businesses, governments, health providers, and educational institutions. Staff used the volume of breaches reported for businesses (246 over a 5 year period, or approximately 50 per year) because that class of data is most compatible with other data staff used to calculate the incidence of breaches.

[153] Staff focused on firms that routinely collect information on a sizeable number of consumers, thereby rendering them attractive targets for data thieves. To do so, staff focused first on retail businesses and eliminated retailers with annual revenue under $1,000,000. The 2002 Economic Census reports that, in that year, there were 418,713 retailers with revenue of $1,000,000 or more. To apply 50 breaches to such a large population, however, would yield a very small incidence rate. In an abundance of caution, to estimate more conservatively the incidence of breach, staff then assumed that only one percent of these firms had security vulnerabilities that would render them breach targets, thus yielding the total of 4,187.

[154] Hourly wages throughout this notice are based on (*http://www.bls.gov/ncs/ncswage2007.htm*) (National Compensation Survey: Occupational Earnings in the United States 2007, U.S. Department of Labor released August 2008, Bulletin 2704, Table 3 (''Full-time civilian workers,'' mean and median hourly wages).

The breakdown of labor hours and costs is as follows: 50 hours of computer and information systems managerial time at $52.56 per hour; 12 hours of marketing managerial time at $53.00 per hour; 33 hours of computer programmer time at $33.77 per hour; and 5 hours of legal staff time at 54.69 per hour.

[155] Staff estimates that breached entities will use 30 hours of a forensic expert's time. Staff applied the wages of a network systems and data communications analyst ($32.56), tripled it to reflect profits and overhead for an outside consultant ($97.68), and multiplied it by 30 hours to yield $2,930.

[156] SIIA at 14.

[157] The PRA burden analyzed here includes the time, effort and financial resources expended by covered entities to generate, maintain, or provide information to or for the Commission on account of the rule. *See* 5 CFR 1320.3(b)(1). ''Collection of information means . . . requiring the disclosure to an agency, third parties or the public of information by or for an agency by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on, ten or more persons . . . .'' 5 CFR1320.3(c).

[158] Ponemon Institute, ''National Survey on Data Security Breach Notification,'' 2005. Staff believes that this estimate is likely high given the importance of data security to the PHR industry and the likelihood that data encryption will be a strong selling point to consumers.

[159] *See* Federal Trade Commission, National Do Not Email Registry, A Report to Congress, June 2004, n.93, *available at* (*http://www.ftc.gov/reports/dneregistry/report.pdf*).

for such notification, or because the email addresses of these individuals are not current or not working. Staff estimated that the cost of notifying an individual by postal mail will be approximately $2.30 per letter.[160] Assuming that vendors of personal health records and PHR related entities will need to notify by postal mail 10 percent of their customers whose information is breached, the estimated cost of this notification will be $53,360 per year. Staff retains this estimate.

In addition, staff recognized that vendors of personal health records and PHR related entities sometimes may need to notify consumers by posting a message on their home page, or by providing media notice. Based on a recent study on data breach costs, staff estimated the cost of providing notice via Web site posting to be 6 cents per breached record, and the cost of providing notice via published media to be 3 cents per breached record.[161] Applied to the above-stated estimate of 232,000 consumers per year receiving breach notification, the estimated total annual cost of Web site notice will be $13,920, and the estimated total annual cost of media notice will be $6,960, yielding an estimated total annual cost for all forms of notice to consumers of $74,240. Staff retains this estimate without modification.

Finally, staff assessed that the cost of a toll-free number will depend on the cost associated with T1 lines [162] sufficient to handle the projected call volume, the cost of obtaining a toll-free telephone number and queue messaging (a service that provides rudimentary call routing), the cost of processing each call, and the telecommunication charges associated with each call. In the NPRM, staff estimated the cost of a toll-free line for a six-month period, because the proposed rule provided that entities choosing to post a message on their homepage do so for a period of six months. Because the Commission has changed this homepage posting requirement to ninety days in response to comments, staff now estimates the cost of a toll-free line for a ninety-day period. Based on industry research, staff projects that in order to accommodate a sufficient number of incoming calls for that period, affected entities may need two T1 lines at a cost of $9,000.[163] Staff further estimates that the cost of obtaining a dedicated toll-free line and queue messaging will be $3,017,[164] and that processing an estimated 5,000 calls for the first month per breach will require an average of 1,917 hours of employee labor at a cost of $27,468.[165] Affected entities will need to offer the toll-free number for an additional two months, during which time staff projects that entities will each cumulatively receive an additional 3,000 calls per breach,[166] yielding an estimated total processing cost of $43,946 ($27,468 + $16,478). In addition, according to industry research, the telecommunication charges associated with the toll-free line will be approximately $2,000.[167] Adding these costs together, staff estimates that the cost per breach for the toll-free line will be $57,963. Based on the above rate of 11 breaches per year, the annual cost burden for affected entities will be $637,593 (11 x $57,963).

In sum, the estimated annual cost burden associated with the breach notification requirements of the final rule is $795,235: $83,402 (costs associated with investigating breaches, drafting notifications of breaches, and notifying the Commission) + $74,240 (costs associated with notifying consumers) + $637,593 (costs associated with establishing toll-free numbers). Staff notes that this estimate likely overstates the costs imposed by the final rule because: (1) it assumes that all breaches will require notification, whereas many breaches (*e.g.*, those involving data that is ''not unsecured'') will not require notification; (2) it assumes that all covered entities will be required to take all of the steps required above; and (3) staff made conservative assumptions in developing many of the underlying estimates.

V. Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 604(a), requires an agency either to provide a Final Regulatory Flexibility Analysis (''FRFA'') with the final rule, or certify that the final rule will not have a significant economic impact on a substantial number of small entities. The Commission does not expect that this final rule will have a significant economic impact on a substantial number of small entities. First, most of the burdens flow from the mandates of the Act, not from the specific provisions of the final rule. Second, the rule will apply to entities that, in many instances, already have obligations to provide notification of data breaches under certain state laws covering medical breaches.[168] Third, once a notice is created, the costs of sending it should be minimal because the Commission anticipates that most consumers will elect to receive notification by email. Based on available information, therefore, the Commission certifies that the final rule will not have significant economic impact on a substantial number of small entities.

Nonetheless, to ensure that no such impact, if any, has been overlooked, the Commission has conducted the following final regulatory flexibility analysis, as summarized below.

A. Need for and Objectives of the Rule

Section 13407 of the American Recovery and Reinvestment Act requires the Commission to promulgate this rule not later than six months after the date of enactment of the Act, or August 17, 2009. The Commission is issuing this rule to implement the Recovery Act's requirement that certain entities that handle health information provide notice to individuals whose individually identifiable health information has been breached.

B. Significant Issues Raised by Public Comment, Summary of the Agency's Assessment of These Issues, and Changes, if any, Made in Response to Such Comments

The Commission did not receive any substantive comments on its proposed

[160] Robin Sidel and Mitchell Pacelle, ''Credit-Card Breach Tests Banking Industry's Defenses,'' Wall Street Journal, June 21, 2005, p.C1. Sidel and Pacelle reported that industry sources estimated the cost per letter to be about $2.00 in 2005. Allowing for inflation, staff estimates the cost to average about $2.30 per letter over the next three years of prospective PRA clearance sought from OMB.

[161] Ponemon Institute, 2006 Annual Study: Cost of a Data Breach, Understanding Financial Impact, Customer Turnover, and Preventative Solutions, Table 2.

[162] A T1 line is a specific type of telephone line that can carry more data than traditional telephone lines.

[163] According to industry research, the cost of a single T1 line is $1,500 per month.

[164] Staff estimates that installation of a toll-free number and queue messaging will require 40 hours of a technician's time. Staff applied the wages of a telecommunications technician ($25.14), tripled it to reflect profits and overhead of a telecommunications firm ($75.42), and multiplied it by 40 hours to yield $3,017.

[165] The breakdown of labor hours and costs is as follows: 667 hours of telephone operator time (8 minutes per call x 5,000 calls) at $14.87 per hour and 1,250 hours of information processor time (15 minutes per call x 5,000 calls) at $14.04 per hour. This totals $27,468.

[166] Staff anticipates that the greatest influx of calls will be in the first month, and that the volume of calls will be less for the next two months. The breakdown of labor hours and costs for this two-month period is as follows: 400 hours of telephone operator time (8 minutes per call x 3,000 calls) at $14.87 per hour and 750 hours of information processor time (15 minutes per call x 3,000 calls) at $14.04 per hour. This totals $16,478.

[167] Staff estimates a cost per call of 25¢ (5¢ per minute/per call x 5 minutes per call). Assuming 8,000 calls for each breach, the total estimated telecommunications charges are $2,000.

[168] *See, e.g.,* Ark. Code 4-110-103(5); Ca. Civil Code 1798.81.5; Md. Code, Com. Law § 14-3501(D)(1).

Regulatory Flexibility Act analysis. Nonetheless, the Commission provides an overview here of the significant comments it received that would affect the costs of complying with the rule for all entities, small and large, and its response.

First, several commenters stressed that FTC and HHS should work together to ensure that their respective breach notification rules are harmonized and that stakeholders know which rule applies to which entity.[169] These commenters recognized that some entities may be subject to both rules, and that it is therefore important for the rules to be similar.[170] The Commission agrees with these comments and has consulted with HHS to harmonize the two rules, within the constraints of the statutory language.

Second, commenters raised several concerns about the timing and method of breach notification that would affect businesses of all sizes. For example, commenters that addressed the issue generally opposed requiring an entity to secure a consumer's ''express affirmative consent'' before sending breach notices by email.[171] For the requirement to provide substitute notice to individuals on the home page of an entity's Web site, many commenters opposed the six month required posting period and suggested that a shorter period would be less burdensome for businesses and less confusing for consumers.[172] Finally, many commenters objected to the proposed rule's requirement that entities provide notice to the Commission no later than five business days after discovery of a breach affecting more than 500 individuals.[173]

As discussed in more detail above, in response to these concerns, the Commission made several changes to the rule, all of which will reduce the burden on entities of all sizes while also ensuring meaningful breach notification to consumers. Specifically, rather than require express affirmative consent for email notice, the final rule allows entities to have their customers opt out of receiving email notice. The final rule also reduces the home page posting period from six months to ninety days, and extends the time period for providing the Commission with notice of large breaches, from five to ten business days.

Finally, other commenters expressed concerns about particular statutory requirements governing breach notification that come directly from the Recovery Act (for example, whether media notice may be too burdensome).[174] Because these requirements come directly from the Recovery Act, the Commission cannot change its final rule in response to these comments. Nevertheless, as discussed above, the Commission will take these comments into account when providing input on the HHS report.

C. Description and Estimate of the Number of Small Entities Subject to the Final Rule or Explanation Why No Estimate Is Available

The final rule will apply to vendors of personal health records, PHR related entities, and third party service providers. As discussed in the section on PRA above, FTC staff estimates that the rule will apply to approximately 900 entities. Staff continues to believe that the available data about the relatively new PHR industry is not sufficient for staff to estimate realistically the number of entities subject to the FTC's final rule that are small as defined by the Small Business Administration.[175]

D. Description of the Projected Reporting, Disclosure and Other Compliance Requirements of the Rule, Including an Estimate of the Classes of Small Entities That Will be Subject to the Rule and the Type of Professional Skills That Will be Necessary to Comply

The Recovery Act and final rule impose certain reporting and disclosure requirements within the meaning of the PRA. The Commission is seeking clearance from OMB for these requirements, and the Commission's Supporting Statement submitted as part of that process is being made available on the public record of this rulemaking.

Specifically, the Act and final rule require vendors of personal health records and PHR related entities to provide notice to consumers and the Commission in the event of a breach of unsecured PHR identifiable health information. The Act and final rule also require third party service providers to provide notice to vendors of personal health records and PHR related entities in the event of such a breach.

As discussed in the section on PRA above, if a breach occurs, each entity covered by the final rule will expend costs to determine the extent of the breach and the individuals affected. If the entity is a vendor of personal health records or PHR related entity, additional costs will include the costs of preparing a breach notice, notifying the Commission, compiling a list of consumers to whom a breach notice must be sent, and sending a breach notice. Such entities may incur additional costs in locating consumers who cannot be reached, and in certain cases, posting a breach notice on a Web site, notifying consumers through media notices, setting up a toll-free number, and sending breach notices through press releases to media outlets.

In-house costs may include technical costs to determine the extent of breaches; investigative costs of conducting interviews and gathering information; administrative costs of compiling address lists; professional/legal costs of drafting the notice; and potentially, costs for postage, and/or web posting. Costs may also include the purchase of services of a forensic expert.

As noted in the final PRA analysis, the estimated annual cost burden for all entities subject to the final rule will be approximately $795,235.

E. Steps the Agency Has Taken to Minimize Any Significant Economic Impact on Small Entities, Consistent With the Stated Objectives of the Applicable Statutes, Including the Factual, Policy, and Legal Reasons for Selecting the Alternative(s) Finally Adopted, and Why Each of the Significant Alternatives, if any, Was Rejected

In drafting the final rule, the Commission has made every effort to avoid unduly burdensome requirements for small entities. In particular, the Commission believes that the alternative of providing notice to consumers electronically will assist small entities by significantly reducing the costs of sending breach notices. Moreover, as discussed above, the Commission has modified the final rule's requirements for timing and method of notice in several ways that will also reduce the burden on small entities.

Two commenters expressed concern that the effective compliance date of 30 calendar days from the date of publication of this final rule would not allow covered entities sufficient time to come into compliance. In response, the Commission notes that the effective compliance date is mandated by the Recovery Act. Moreover, as discussed above, the Commission believes that in many instances the rule will apply to entities that already have obligations to provide notification of data breaches

[169] *See supra* note 7.

[170] *See supra* note 8.

[171] *See supra* note 99.

[172] *See supra* note 118.

[173] *See supra* note 134.

[174] *See supra* notes 19-20.

[175] For a majority of the entities subject to the rule to be considered small businesses, they must have average annual receipts that are $7 million or less. A list of the SBA's size standards for all industries can be found at (*http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf*) (last visited July 24, 2009).

under certain state laws covering medical breaches. As a result, these entities can build upon their existing programs in order to come into compliance with this final rule. Nevertheless, the Commission has determined that it will use its enforcement discretion to refrain from imposing sanctions for failure to provide the required notifications for breaches that are discovered before February 22, 2010.

The Commission is not aware of additional methods of compliance that will reduce the impact of the final rule on small entities, while also comporting with the Recovery Act.

VI. Final Rule

List of Subjects in 16 CFR Part 318

Consumer protection, Data protection, Health records, Privacy, Trade practices.

■ Accordingly, for the reasons set forth in the preamble, the Commission adds a new Part 318 to title 16 of the Code of Federal Regulations, to read as follows:

PART 318—HEALTH BREACH NOTIFICATION RULE

Sec.

318.1 Purpose and scope.
318.2 Definitions.
318.3 Breach notification requirement.
318.4 Timeliness of notification.
318.5 Method of notice.
318.6 Content of notice.
318.7 Enforcement.
318.8 Effective date.
318.9 Sunset.

Authority: Public Law 111-5, 123 Stat. 115 (2009).

§ 318.1 Purpose and scope.

(a) This Part, which shall be called the ''Health Breach Notification Rule,'' implements section 13407 of the American Recovery and Reinvestment Act of 2009. It applies to foreign and domestic vendors of personal health records, PHR related entities, and third party service providers, irrespective of any jurisdictional tests in the Federal Trade Commission (FTC) Act, that maintain information of U.S. citizens or residents. It does not apply to HIPAA-covered entities, or to any other entity to the extent that it engages in activities as a business associate of a HIPAA-covered entity.

(b) This Part preempts state law as set forth in section 13421 of the American Recovery and Reinvestment Act of 2009.

§ 318.2 Definitions.

(a) *Breach of security* means, with respect to unsecured PHR identifiable health information of an individual in a personal health record, acquisition of such information without the authorization of the individual. Unauthorized acquisition will be presumed to include unauthorized access to unsecured PHR identifiable health information unless the vendor of personal health records, PHR related entity, or third party service provider that experienced the breach has reliable evidence showing that there has not been, or could not reasonably have been, unauthorized acquisition of such information.

(b) *Business associate* means a business associate under the Health Insurance Portability and Accountability Act, Public Law 104-191, 110 Stat. 1936, as defined in 45 CFR 160.103.

(c) *HIPAA*-covered entity means a covered entity under the Health Insurance Portability and Accountability Act, Public Law 104-191, 110 Stat. 1936, as defined in 45 CFR 160.103.

(d) *Personal health record* means an electronic record of PHR identifiable health information on an individual that can be drawn from multiple sources and that is managed, shared, and controlled by or primarily for the individual.

(e) *PHR identifiable health information* means ''individually identifiable health information,'' as defined in section 1171(6) of the Social Security Act (42 U.S.C. 1320d(6)), and, with respect to an individual, information:

(1) That is provided by or on behalf of the individual; and

(2) That identifies the individual or with respect to which there is a reasonable basis to believe that the information can be used to identify the individual.

(f) *PHR related entity* means an entity, other than a HIPAA-covered entity or an entity to the extent that it engages in activities as a business associate of a HIPAA-covered entity, that:

(1) Offers products or services through the Web site of a vendor of personal health records;

(2) Offers products or services through the Web sites of HIPAA-covered entities that offer individuals personal health records; or

(3) Accesses information in a personal health record or sends information to a personal health record.

(g) *State* means any of the several States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa and the Northern Mariana Islands.

(h) *Third party service provider* means an entity that:

(1) Provides services to a vendor of personal health records in connection with the offering or maintenance of a personal health record or to a PHR related entity in connection with a product or service offered by that entity; and

(2) Accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, uses, or discloses unsecured PHR identifiable health information as a result of such services.

(i) *Unsecured* means PHR identifiable information that is not protected through the use of a technology or methodology specified by the Secretary of Health and Human Services in the guidance issued under section 13402(h)(2) of the American Reinvestment and Recovery Act of 2009.

(j) *Vendor of personal health records* means an entity, other than a HIPAA-covered entity or an entity to the extent that it engages in activities as a business associate of a HIPAA-covered entity, that offers or maintains a personal health record.

§ 318.3 Breach notification requirement.

(a) *In general.* In accordance with §§ 318.4, 318.5, and 318.6, each vendor of personal health records, following the discovery of a breach of security of unsecured PHR identifiable health information that is in a personal health record maintained or offered by such vendor, and each PHR related entity, following the discovery of a breach of security of such information that is obtained through a product or service provided by such entity, shall:

(1) Notify each individual who is a citizen or resident of the United States whose unsecured PHR identifiable health information was acquired by an unauthorized person as a result of such breach of security; and

(2) Notify the Federal Trade Commission.

(b) *Third party service providers.* A third party service provider shall, following the discovery of a breach of security, provide notice of the breach to an official designated in a written contract by the vendor of personal health records or the PHR related entity to receive such notices or, if such a designation is not made, to a senior official at the vendor of personal health records or PHR related entity to which it provides services, and obtain acknowledgment from such official that such notice was received. Such notification shall include the identification of each customer of the vendor of personal health records or PHR related entity whose unsecured PHR identifiable health information has been, or is reasonably believed to have been, acquired during such breach. For purposes of ensuring implementation of

this requirement, vendors of personal health records and PHR related entities shall notify third party service providers of their status as vendors of personal health records or PHR related entities subject to this Part.

(c) *Breaches treated as discovered.* A breach of security shall be treated as discovered as of the first day on which such breach is known or reasonably should have been known to the vendor of personal health records, PHR related entity, or third party service provider, respectively. Such vendor, entity, or third party service provider shall be deemed to have knowledge of a breach if such breach is known, or reasonably should have been known, to any person, other than the person committing the breach, who is an employee, officer, or other agent of such vendor of personal health records, PHR related entity, or third party service provider.

§ 318.4 Timeliness of notification.

(a) *In general.* Except as provided in paragraph (c) of this section and § 318.5(c), all notifications required under §§ 318.3(a)(1), 318.3(b), and 318.5(b) shall be sent without unreasonable delay and in no case later than 60 calendar days after the discovery of a breach of security.

(b) *Burden of proof.* The vendor of personal health records, PHR related entity, and third party service provider involved shall have the burden of demonstrating that all notifications were made as required under this Part, including evidence demonstrating the necessity of any delay.

(c) *Law enforcement exception.* If a law enforcement official determines that a notification, notice, or posting required under this Part would impede a criminal investigation or cause damage to national security, such notification, notice, or posting shall be delayed. This paragraph shall be implemented in the same manner as provided under 45 CFR 164.528(a)(2), in the case of a disclosure covered under such section.

§ 318.5 Methods of notice.

(a) *Individual notice.* A vendor of personal health records or PHR related entity that discovers a breach of security shall provide notice of such breach to an individual promptly, as described in § 318.4, and in the following form:

(1) Written notice, by first-class mail to the individual at the last known address of the individual, or by email, if the individual is given a clear, conspicuous, and reasonable opportunity to receive notification by first-class mail, and the individual does not exercise that choice. If the individual is deceased, the vendor of personal health records or PHR related entity that discovered the breach must provide such notice to the next of kin of the individual if the individual had provided contact information for his or her next of kin, along with authorization to contact them. The notice may be provided in one or more mailings as information is available.

(2) If, after making reasonable efforts to contact all individuals to whom notice is required under § 318.3(a), through the means provided in paragraph (a)(1) of this section, the vendor of personal health records or PHR related entity finds that contact information for ten or more individuals is insufficient or out-of-date, the vendor of personal health records or PHR related entity shall provide substitute notice, which shall be reasonably calculated to reach the individuals affected by the breach, in the following form:

(i) Through a conspicuous posting for a period of 90 days on the home page of its Web site; or

(ii) In major print or broadcast media, including major media in geographic areas where the individuals affected by the breach likely reside. Such a notice in media or web posting shall include a toll-free phone number, which shall remain active for at least 90 days, where an individual can learn whether or not the individual's unsecured PHR identifiable health information may be included in the breach.

(3) In any case deemed by the vendor of personal health records or PHR related entity to require urgency because of possible imminent misuse of unsecured PHR identifiable health information, that entity may provide information to individuals by telephone or other means, as appropriate, in addition to notice provided under paragraph (a)(1) of this section.

(b) *Notice to media.* A vendor of personal health records or PHR related entity shall provide notice to prominent media outlets serving a State or jurisdiction, following the discovery of a breach of security, if the unsecured PHR identifiable health information of 500 or more residents of such State or jurisdiction is, or is reasonably believed to have been, acquired during such breach.

(c) *Notice to FTC.* Vendors of personal health records and PHR related entities shall provide notice to the Federal Trade Commission following the discovery of a breach of security. If the breach involves the unsecured PHR identifiable health information of 500 or more individuals, then such notice shall be provided as soon as possible and in no case later than ten business days following the date of discovery of the breach. If the breach involves the unsecured PHR identifiable health information of fewer than 500 individuals, the vendor of personal health records or PHR related entity may maintain a log of any such breach, and submit such a log annually to the Federal Trade Commission no later than 60 calendar days following the end of the calendar year, documenting breaches from the preceding calendar year. All notices pursuant to this paragraph shall be provided according to instructions at the Federal Trade Commission's Web site.

§ 318.6 Content of notice.

Regardless of the method by which notice is provided to individuals under § 318.5 of this Part, notice of a breach of security shall be in plain language and include, to the extent possible, the following:

(a) A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known;

(b) A description of the types of unsecured PHR identifiable health information that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code);

(c) Steps individuals should take to protect themselves from potential harm resulting from the breach;

(d) A brief description of what the entity that suffered the breach is doing to investigate the breach, to mitigate harm, and to protect against any further breaches; and

(e) Contact procedures for individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an email address, Web site, or postal address.

§ 318.7 Enforcement.

A violation of this Part shall be treated as an unfair or deceptive act or practice in violation of a regulation under § 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)) regarding unfair or deceptive acts or practices.

§ 318.8 Effective date.

This Part shall apply to breaches of security that are discovered on or after September 24, 2009.

§ 318.9 Sunset.

If new legislation is enacted establishing requirements for notification in the case of a breach of security that apply to entities covered

by this Part, the provisions of this Part shall not apply to breaches of security discovered on or after the effective date of regulations implementing such legislation.

By direction of the Commission.

Donald S. Clark,

Secretary.

Note: The following attachment will not appear in the Code of Federal Regulations.

BILLING CODE 6750–01–S

Federal Trade Commission

The nation's consumer protection agency

Notice of Breach of Health Information

OMB Control No: 3084-[TBD]

Are you in the business of offering or maintaining personal health records? Does your company offer products or services that interact with personal health records – for example, an online weight tracking program that sends information to a personal health record or pulls information from it? If that describes your line of work – and if you're not covered by the Health Insurance Portability & Accountability Act (HIPAA) – the law requires you to take steps if you've had a breach involving information in a personal health record not secured in a certain way. Under the law, 16 C.F.R. Part 318, you must:

1. Notify everyone whose information was breached;
2. In many cases, notify the media; and
3. Notify the Federal Trade Commission (FTC).

The FTC has designed this form to make it easier for you to report a breach to us. For more on notifying the people whose information was breached, visit www.ftc.gov/healthbreach.

For all breaches

- Complete this form and send it to:

  Federal Trade Commission
  Associate Director – HBN
  Division of Privacy & Identity Protection
  600 Pennsylvania Avenue, N.W.
  Mail Stop NJ-3158
  Washington, DC 20580

- Include your own contact information. Don't include any personally identifiable information involved in the breach.

- Verify the form arrived at the FTC by using a mailing method that gives you proof of delivery. For security reasons, please don't email the form.

Timelines These timelines refer to when you must notify the FTC of the breach. If the law requires you to contact the people whose information was breached, you must notify them as soon as you can – and no later than 60 days after discovering the breach.

For breaches involving the records of 500 or more people
Complete this form and send it to the FTC within 10 business days of discovering the breach.

For breaches involving the records of fewer than 500 people
Complete this form and send it to the FTC by the 60th day of the calendar year following the breach. For example, if you discover a breach involving fewer than 500 people on June 30, 2009, send this form to the FTC no later than 60 days into the calendar year of 2010. If you experience two breaches like this in one calendar year – one on June 30th and another on November 1st – complete a separate form for each breach, staple them together, and send them to the FTC no later than 60 days into the calendar year of 2010.

Questions? Call the FTC at (202) 326-2252, email hbn@ftc.gov, or send a letter to the address above.

Paperwork Reduction Act Statement: Under the Paperwork Reduction Act, as amended, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Notice of Breach of Health Information

Your company or organization

Name of your company or organization:	Website:
Address:	
City / State / Zip	
Contact person at your company or organization:	
Contact telephone:	About how many employees does your company or organization have?
Contact email address:	What products or services do you offer?

Information about the breach

Type of breach:

- ☐ Lost or stolen laptop, computer, flash drive, disk, etc.
- ☐ Stolen password or credentials
- ☐ Unauthorized access by an employee or contractor
- ☐ Hacker
- ☐ Other (describe)

Date(s) the breach happened (if you know): From: / / To: / /	Have you made the breach public? ☐ Yes ☐ No If YES, when did you make it public?
Date the breach was discovered: / /	
How many individuals were affected by the breach?	

Comments:

Type of information involved (check all that apply):

Personal Information

- ☐ Name
- ☐ Address
- ☐ Date of birth
- ☐ Social Security Number
- ☐ Drivers license or identification card number
- ☐ Financial information (credit card number, bank account number, etc)
- ☐ Health insurance information (insurance carrier, insurance card number, etc.)
- ☐ Other Personal or Health Information (describe):

Health Information

- ☐ Basic information (age, sex, height, etc.)
- ☐ Disease or medical conditions
- ☐ Medications
- ☐ Treatments or procedures
- ☐ Immunizations
- ☐ Allergies
- ☐ Information about children
- ☐ Test results
- ☐ Hereditary conditions
- ☐ Mental health information
- ☐ Information about diet, exercise, weight, etc.
- ☐ Correspondence between patient and providers
- ☐ Living wills, advance directives, or medical power of attorney
- ☐ Organ donor authorization

Notice of Breach of Health Information

What steps are you taking to investigate the breach?
What steps are you taking to mitigate losses?
What steps are you taking to protect against further breaches?
List any law enforcement agencies you've contacted about the breach.

Breach notification

Have you notified the people whose information was breached?

☐ YES. We notified them on:

Attach a copy of the letter to this form. Don't include any personally identifiable information, other than your own contact information.

☐ NO. Our investigation isn't complete.

If you determine you need to notify them, as soon as you can – and no later than 60 days after discovering the breach – you must: 1) Notify the people whose information was breached; and 2) Send a copy of the letter to the FTC. Don't include any personally identifiable information, other than your own contact information.

If you determine you don't need to notify the people whose information was breached, send a letter to the FTC at the address below explaining why notification isn't necessary.

Has anyone at your business or organization received information that someone has been harmed by this breach? For example, has a customer called you to complain about identity theft? Or are you aware of any public disclosure of information that resulted from the breach? ☐ YES ☐ NO

If YES, describe the harm you've found out about. Don't include any personally identifiable information.

Print form and send it to:

Federal Trade Commission
Associate Director – HBN
Division of Privacy & Identity Protection
600 Pennsylvania Avenue, N.W.
Mail Stop NJ-3158
Washington, DC 20580

For FTC use:
Reference Number: _____

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Federal Register

Tuesday,
August 25, 2009

Part III

Department of Transportation

Federal Railroad Administration

49 CFR Part 213

Track Safety Standards; Continuous Welded Rail (CWR); Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 213

[Docket No. FRA–2008–0036]

RIN 2130–AB90

Track Safety Standards; Continuous Welded Rail (CWR)

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: FRA is amending the Federal Track Safety Standards to promote the safety of railroad operations over continuous welded rail (CWR). In particular, FRA is promulgating specific requirements for the qualification of persons designated to inspect CWR track, or supervise the installation, adjustment, or maintenance of CWR track. FRA is also clarifying the procedures associated with the submission of CWR plans to FRA by track owners. The final rule specifies that these plans should add focus on inspecting CWR for pull-apart prone conditions, and on CWR joint installation and maintenance procedures. This final rule will also make other changes to the requirements governing CWR.

DATES: *Effective date:* This final rule is effective August 25, 2009.

Compliance dates: October 9, 2009 for Class I railroads; November 23, 2009 for Class II railroads; and February 22, 2010 for Class III railroads.

FOR FURTHER INFORMATION CONTACT: Kenneth Rusk, Staff Director, Office of Railroad Safety, FRA, 1200 New Jersey Avenue, SE., Washington, DC 20590 (telephone: (202) 493–6236); or Sarah Grimmer Yurasko, Trial Attorney, Office of the Chief Counsel, FRA, 1200 New Jersey Avenue, SE., Washington, DC 20950 (*telephone:* (202) 493–6390).

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Background

I. Continuous Welded Rail (CWR)

A. General

CWR refers to the way in which rail is joined together to form track. In CWR, rails are welded together to form one continuous rail that may be several miles long. Although CWR is normally one continuous rail, there can be joints [1] in it for one or more reasons: the need for insulated joints that electrically separate track segments for signaling purposes, the need to terminate CWR installations at a segment of jointed rail, or the need to remove and replace a section of defective rail.

B. Statutory and Regulatory History for CWR

FRA issued the first Federal Track Safety Standards in 1971. *See* 36 FR 20336 (October 20, 1971), codified at 49 CFR part 213. At that time, FRA addressed CWR in a rather general manner, stating, in 49 CFR 213.119, that railroads must install CWR at a rail temperature that prevents lateral displacement of track or pull-aparts of rail ends and that CWR should not be disturbed at rail temperatures higher than the installation or adjusted installation temperature.

In 1982, FRA removed § 213.119 because FRA believed it was so general in nature that it provided little guidance to railroads and it was difficult to enforce. *See* 47 FR 7275 (February 18, 1982) and 47 FR 39398 (September 7, 1982). FRA stated: ''While the importance of controlling thermal stresses within continuous welded rail has long been recognized, research has not advanced to the point where specific safety requirements can be established.'' 47 FR 7279. FRA explained that continuing research might produce reliable data in this area in the future.

[1] Rail joints commonly consist of two joint bars that are bolted to the sides of two abutting ends of rail and contact the rail at the bottom surface of the rail head and the top surface of the rail base.

Congressional interest in CWR developed. With passage of the Rail Safety Enforcement and Review Act (Pub. L. 102–365, September 3, 1992), Congress required the Secretary of Transportation (Secretary) to evaluate procedures for installing and maintaining CWR and its attendant structure. In 1994, Congress further directed the Secretary to specifically evaluate cold weather installation procedures for CWR with passage of the Federal Railroad Safety Reauthorization Act of 1994 (Pub. L. 103–440, November 2, 1994), codified at 49 U.S.C. 20142. As delegated by the Secretary, *see* 49 CFR 1.49(m), FRA evaluated those procedures in connection with information gathered from the industry and FRA's own research and development activities. FRA then addressed CWR procedures by adding § 213.119 during its 1998 revision of the Track Safety Standards. *See* 63 FR 33992 (June 22, 1998).

Section 213.119, as added in 1998, requires railroads to develop and submit to FRA, written CWR plans containing procedures that, at a minimum, provide for the installation, adjustment, maintenance, and inspection of CWR, as well as a training program and minimal recordkeeping requirements. Section 213.119 does not dictate which procedures a railroad must use in its CWR plan; however, it states that each track owner with track constructed of CWR shall have in effect and comply with a plan that contains written procedures which address the installation, adjustment, maintenance, and inspection of CWR, the inspection of CWR joints, and a training program for the application of those procedures. It allows each railroad to develop and implement its individual CWR plan based on procedures which have proven effective for it over the years. The operative assumption was that geophysical conditions vary so widely among U.S. railroads that, in light of what was then known about CWR, CWR plans should vary to take account of them. Accordingly, procedures can vary from railroad to railroad.

On August 10, 2005, President Bush signed into law the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59). Section 9005(a) of SAFETEA–LU amended 49 U.S.C. 20142 by adding a new subsection (e). This new subsection required that within 90 days after its enactment, FRA require (1) each track owner using CWR track to include procedures (in its procedures filed with FRA pursuant to § 213.119) to improve the identification of cracks in rail joint bars; (2) instruct

FRA track inspectors to obtain copies of the most recent CWR programs of each railroad within the inspectors' areas of responsibility and require that inspectors use those programs when conducting track inspections; and (3) establish a program to review CWR joint bar inspection data from railroads and FRA track inspectors periodically. This new subsection also provided that whenever FRA determines that it is necessary or appropriate, FRA may require railroads to increase the frequency of inspection, or improve the methods of inspection, of joint bars in CWR.

Pursuant to this mandate, on November 2, 2005, FRA revised the Track Safety Standards by publishing an interim final rule (IFR), 70 FR 66288, which addresses the inspection of rail joints in CWR. FRA requested comment on the IFR and provided the Railroad Safety Advisory Committee (RSAC) with an opportunity to review the comments on the IFR. To facilitate this review, on February 22, 2006, RSAC established the Track Safety Standards Working Group (Working Group). The Working Group was given two tasks: (1) To resolve the comments on the IFR, and (2) to make recommendations regarding FRA's role in oversight of CWR programs, including analyzing the data to determine effective management of CWR safety by the railroads. The first task, referred to as ''Phase I'' of the CWR review, included analyzing the IFR on the inspection of joint bars in CWR territory, reviewing the comments on the IFR, and developing recommendations for the final rule. With guidance from the Working Group, FRA published a final rule on October 11, 2006, 71 FR 59677, which addressed the comments on the IFR, adopted a portion of the IFR, and made changes to other portions. The final rule became effective October 31, 2006, and is codified at 49 CFR part 213.

The Working Group then turned to the second task, referred to as ''Phase II'' of RSAC's referral, which involves an examination of all the requirements of § 213.119 concerning CWRB—not focused only on those concerning joints in CWR. As discussed below, the Working Group reported its findings and recommendations to RSAC at its February 20, 2008 meeting. RSAC approved the recommended consensus regulatory text proposed by the Working Group, which accounts for the majority of the notice of proposed rulemaking (NPRM) that FRA published on December 1, 2008 at 73 FR 73078. FRA received five comments during the public comment period for the NPRM, which the agency will address in the discussion of this final rule.

II. Railroad Safety Advisory Committee (RSAC) Overview

In March 1996, FRA established RSAC, which provides a forum for developing consensus recommendations to FRA's Administrator on rulemakings and other safety program issues. The RSAC includes representation from all of the agency's major stakeholder groups, including railroads, labor organizations, suppliers and manufacturers, and other interested parties. A list of RSAC members follows:

American Association of Private Railroad Car Owners (AARPCO);
American Association of State Highway & Transportation Officials (AASHTO);
American Chemistry Council;
American Petrochemical Institute;
American Public Transportation Association (APTA);
American Short Line and Regional Railroad Association (ASLRRA);
American Train Dispatchers Association (ATDA);
Association of American Railroads (AAR);
Association of Railway Museums (ARM);
Association of State Rail Safety Managers (ASRSM);
Brotherhood of Locomotive Engineers and Trainmen (BLET);
Brotherhood of Maintenance of Way Employes Division (BMWED);
Brotherhood of Railroad Signalmen (BRS);
Chlorine Institute;
Federal Transit Administration (FTA);*
Fertilizer Institute;
High Speed Ground Transportation Association (HSGTA);
Institute of Makers of Explosives;
International Association of Machinists and Aerospace Workers;
International Brotherhood of Electrical Workers (IBEW);
Labor Council for Latin American Advancement (LCLAA);*
League of Railway Industry Women;*
National Association of Railroad Passengers (NARP);
National Association of Railway Business Women;*
National Conference of Firemen & Oilers;
National Railroad Construction and Maintenance Association;
National Railroad Passenger Corporation (Amtrak);
National Transportation Safety Board (NTSB);*
Railway Supply Institute (RSI);
Safe Travel America (STA);
Secretaria de Comunicaciones y Transporte;*
Sheet Metal Workers International Association (SMWIA);
Tourist Railway Association Inc.;
Transport Canada;*
Transport Workers Union of America (TWU);
Transportation Communications International Union/BRC (TCIU/BRC);
Transportation Security Administration (TSA);* and
United Transportation Union (UTU).
*Indicates associate, non-voting membership.

When appropriate, FRA assigns a task to RSAC, and after consideration and debate, RSAC may accept or reject the task. If the task is accepted, RSAC establishes a working group that possesses the appropriate expertise and representation of interests to develop recommendations to FRA for action on the task. These recommendations are developed by consensus. A working group may establish one or more task forces to develop facts and options on a particular aspect of a given task. The task force then provides that information to the working group for consideration. If a working group comes to unanimous consensus on recommendations for action, the package is presented to the full RSAC for a vote. If the proposal is accepted by a simple majority of RSAC, the proposal is formally recommended to FRA. FRA then determines what action to take on the recommendation. Because FRA staff play an active role at the working group level in discussing the issues and options and in drafting the language of the consensus proposal, FRA is often favorably inclined toward the RSAC recommendation.

However, FRA is in no way bound to follow the recommendation, and the agency exercises its independent judgment on whether the recommended rule achieves the agency's regulatory goal, is soundly supported, and is in accordance with policy and legal requirements. Often, FRA varies in some respects from the RSAC recommendation in developing the actual regulatory proposal or final rule. Any such variations would be noted and explained in the rulemaking document issued by FRA. If the working group or RSAC is unable to reach consensus on recommendations for action, FRA moves ahead to resolve the issue through traditional rulemaking proceedings.

III. RSAC Track Safety Standards Working Group

As noted above, RSAC established the Track Safety Standards Working Group on February 22, 2006. To address Phase I of RSAC's referral, the Working Group convened on April 3–4, 2006; April 26–28, 2006; May 24–25, 2006; and July 19–20, 2006. The results of the Working Group's efforts were incorporated into the final rule that was published on October 11, 2006. To address Phase II of RSAC's referral, the Working Group convened on January 30–31, 2007; April 10–11, 2007; June 27–28, 2007; August 15–16, 2007; October 23–24, 2007; and

January 8–9, 2008. The Working Group's finding and recommendations were then presented to the full RSAC on February 20, 2008, as noted above.

The members of the Working Group, in addition to FRA, include the following:

AAR, including members from BNSF Railway Company (BNSF), Canadian National Railway (CN), Canadian Pacific Railway (CP), Consolidated Rail Corporation (Conrail), CSX Transportation, Inc. (CSX), The Kansas City Southern Railway Company (KCS), Norfolk Southern Railway Company (NS), and Union Pacific Railroad Company (UP);

Amtrak;

APTA, including members from Port Authority Trans-Hudson Corporation (PATH), LTK Engineering Services, Northeast Illinois Regional Commuter Railroad Corporation (Metra), and Peninsula Corridor Joint Powers Board (Caltrain);

ASLRRA (representing Class III/smaller railroads);

ASRSM (represented by staff from the California Public Utilities Commission (CPUC));

BLET;

BMWED;

BRS;

Kandrew, Inc.;

Transportation Technology Center, Inc. (TTCI); and

UTU.

Staff from DOT's John A. Volpe National Transportation Systems Center (Volpe Center) attended all of the meetings and contributed to the technical discussions. In addition, NSTB staff attended all of the meetings and contributed to the discussions as well.

FRA has worked closely with the RSAC in developing its recommendations and believes that the RSAC has effectively addressed concerns with regard to FRA's management of CWR and rail carriers' effective implementation of their CWR plans. FRA has greatly benefited from the open, informed exchange of information during the meetings. There is a general consensus among the railroads, rail labor organizations, State safety managers, and FRA concerning the primary principles FRA sets forth in this final rule. The Working Group has also benefited in particular from participation of NTSB staff. FRA believes that the expertise possessed by the RSAC representatives enhances the value of the recommendations, and FRA has made every effort to incorporate them in this final rule.

The Working Group was unable to reach consensus on one item that FRA has elected to include in this final rule. The Working Group did not reach consensus with regard to the change to 49 CFR 213.119(c), which describes the joint installation and maintenance procedures that track owners must include in their CWR plans. The FRA representatives to the Working Group felt strongly that the text is necessary to include in the final rule, as the failure of CWR joints was the principal basis for the 2006 final rule. The FRA members believed that the integrity of CWR joints could not be definitively maintained without requiring that the specific installation and maintenance procedures delineated in § 213.119(c) be included in the track owner's CWR plan. On the other hand, the rail carrier representatives argued that such specific requirements would interfere with their freedom to modify installation and maintenance procedures as they saw fit. Nevertheless, it is FRA's position that the text is necessary to prevent the failure of CWR joints and has included this singular, non-consensus item into the rule text of this final rule.

IV. FRA's Approach to CWR in This Final Rule

As opposed to the more narrow approach taken by FRA when publishing the final rule on inspections of joints in CWR (Oct. 11, 2006; 71 FR 59677), FRA broadly reviewed all of § 213.119 for purposes of this final rule. In collaboration with the Working Group, FRA examined compliance with § 213.119 in general and concerns brought forward by the industry. At the end of the first Working Group meeting, FRA decided to focus the review on the following issues: the training/re-training of individuals qualified to maintain and inspect CWR; the submission of CWR plans to FRA; the availability of a carrier's plan at CWR work sites; special inspections of CWR; the definition of CWR; ballast; and anchoring requirements.

A. Qualifications and Training of Individuals on CWR

During the rulemaking on inspections of joints in CWR, the BMWED suggested that there should be annual re-training of track inspectors on joint bar inspections in CWR. FRA understood this comment as pertaining to CWR training in general and resolved to address this concern as part of the Phase II task of broadly reviewing § 213.119. In carrying out this task, and because of the concern raised by the BMWED, the Working Group decided that it would be beneficial to review accident data from Class I and shortline railroads to determine whether accidents on CWR could be attributed to training deficiencies of track inspectors. The Working Group established the Accident Review Task Force (AR Task Force) to facilitate this review and analysis, and it was comprised of FRA and the following Working Group members:

AAR, including BNSF, CSX, CP, NS, and UP;

Amtrak;

APTA, including Metra;

ASLRRA;

BMWED; and

BRS.

Staff from the Volpe Center and NTSB also participated in this effort, which focused on researching and analyzing accident data from the years 2000 to 2007 for major causal factors of accidents on CWR. The AR Task Force initially reviewed over 1100 accident/incident report forms from January 2000 to August 2007. After taking into consideration the location of the most severe accidents/incidents, the AR Task Force narrowed its review to exclude accidents/incidents on Class 1 and excepted track, as defined in 49 CFR part 213. The final review included over 200 reports that met the objectives and criteria for study.

The AR Task Force determined that a high volume of accidents was due to misalignment of track, caused by sunkinks or buckling of the track. The AR Task Force also discovered that each incident studied occurred after track work had been performed recently, and, surprisingly, that the carriers' CWR engineering standards were not being followed in conducting various types of track work. In particular, the research disclosed failure to adequately de-stress the track following a previous derailment; failure to maintain the neutral temperature of the rail and to record the amount of rail added or removed during installation; failure to adjust or replace deficient anchors; and failure to place the proper speed restrictions and/or maintain a sufficient length of time and/or tonnage on disturbed track. Moreover, upon review of the railroads' CWR program plans, FRA noted that the railroads were not providing comprehensive guidelines for the training/retraining of their employees in the application of CWR procedures.

Given the concerns raised, the Working Group decided that it was necessary to ensure that individuals are properly qualified and trained to install, adjust, maintain, and inspect CWR track. Section 213.7 previously delineated how a railroad must designate (1) qualified persons to supervise restorations and renewals of

track, (2) qualified persons to inspect track, and (3) persons who may pass trains over broken rails and pull-aparts. However, the section contained no explicit provision for individuals to supervise restorations and renewals of track, or for individuals to inspect track, specific to CWR. In order to address qualification and training concerns specific to individuals qualified on CWR, the Working Group recommend adding a new paragraph (c) to § 213.7. *See* the Section-by-Section Analysis, below, for further discussion of the changes to this section.

B. Submission of CWR Plans to FRA

The second issue that was raised at the Working Group discussions involved the submission of CWR plans to FRA. FRA representatives raised the concern that rail carriers were presenting plans to FRA's Office of Safety [2] that were not the current plans, were unenforceable because of their vagueness, and did not contain all of the procedures in a single, comprehensive document. The Working Group therefore discussed: (1) The need to develop a mechanism for updating and submitting CWR program procedures in a timely manner to FRA's Office of Safety; (2) notification and re-submission criteria for any and all modifications to program plans; (3) the need for CWR procedures to be contained in a single document; and (4) the desirability of track owners submitting changes to CWR procedures to FRA prior to implementation, as immediate implementation can cause problems with enforcement activities and information being available to FRA personnel in the field.

The Working Group determined that there was a need to establish procedures for the submission and implementation of modified CWR plans to maintain consistency with the continued growth of the industry through developments in engineering and technology. Initially, rail carrier representatives did not agree with FRA's position on the need for changes to their CWR procedures to be sent to FRA prior to their implementation. They contended that changes in CWR procedures should be effective immediately, without having to submit the changes to FRA in advance. For example, the rail carrier representatives stated that the ability to change their plans as they wished would help them to more expeditiously incorporate recent developments based upon engineering and accident review findings. However, since FRA enforces the plan that the track owner has on file with FRA, if track owners change their plans without first notifying FRA, the agency cannot properly enforce their plans. The rail carrier representatives acknowledged this issue and agreed to FRA's proposal that any change to a CWR plan be submitted to FRA at least 30 days prior to its implementation. Nevertheless, FRA makes clear that a track owner is allowed to immediately implement more restrictive measures than provided for in the plan on file with FRA. The track owner can, of course, do more than the minimum measures provided for in its plan, such as to address an immediate safety concern. However, the track owner would not be able to do less than the minimum measures provided for in its plan without first following the proposed procedures for changing the plan.

The rail carrier representatives stated that they would like to know when FRA has received a submitted CWR plan. FRA agreed that this request was reasonable, and agreed to include a provision in the regulation stating that FRA will issue a written statement acknowledging receipt of the plan to the track owner. The Working Group also discussed that the current regulatory text was vague as to what FRA did with a plan once it was received. FRA has determined that the best course of action is to allow for the agency to review a plan and, if it is disapproved, to state the reasons for the disapproval. This is intended to allow the track owner to better understand and remedy the deficiencies that FRA identifies with its plan. The final regulatory text also provides a process by which the track owner could appeal an initial rejection of its CWR plan by FRA. This process is further discussed in the Section-by-Section Analysis, below.

C. Availability of CWR Written Procedures at CWR Work Sites

With the passage of SAFETEA–LU in 2005, Congress mandated that FRA instruct its track inspectors to obtain the most recent copies of rail carriers' CWR plans and to use these plans when conducting track inspections. In response, FRA posted the CWR plans received by the Office of Safety on FRA's Intranet site, where they are available to all Federal and State inspectors, and has instructed all of its inspectors to use these plans when conducting track inspections.

The Working Group discussed the desirability of having copies of the carrier's written CWR procedures at every work site. FRA and labor representatives maintained that updated revisions and modifications to the CWR plans should be made available to the carrier personnel responsible for the installation, adjustment, maintenance, and inspection of CWR; railroads should maintain/retain these procedures and guidelines within their engineering manuals. FRA proposed to the Working Group that the railroads provide a copy of their CWR program plans to be maintained on-site during the performance of duties either with the employee in charge or the qualified employee conducting the work. This type of practice would ensure that personnel understand the track owner's CWR policies and procedures.

The Working Group reached consensus that the track owner should make available, in one comprehensive manual, a copy of the track owner's CWR plan, including all revisions, appendices, updates, and referenced materials, at every job site where personnel are assigned to install, inspect, and maintain CWR.

D. Special Inspections

During Phase I of the Working Group's assignment, it was determined that the issue of special inspections of CWR during cold weather be tabled until Phase II. During preliminary Phase II discussions, the Working Group recognized that this issue would be better resolved by enlisting additional resources for further technical engineering research and analysis. The Working Group therefore formed the Technical Issues Task Force (TI Task Force), which was principally comprised of members from the Volpe Center and Kandrew, Inc., an independent engineering contractor engaged to represent the interests of the AAR. Technical concerns discussed by the TI Task Force included: Speed restrictions for track work following mechanized stabilization (*i.e.*, how slow orders are lifted); maintaining the desired rail installation temperature range; inspecting for curve movement; the relationship between ambient and rail temperature; special inspections (cold weather effects on rail); and rail anchoring requirements. The TI Task Force reported to the Working Group that all of these issues should be handled either individually or jointly in special CWR inspections.

E. Definition of CWR

CWR refers to the way in which rail is joined together to form track. In CWR, rails are welded together to form one continuous rail that may be several miles long. Although CWR is nominally one continuous rail, rail joints may exist for many different reasons. CWR is

[2] In November 2008 the Office of Safety was renamed the Office of Railroad Safety.

currently defined as rail that has been welded together into lengths exceeding 400 feet. Labor representatives questioned whether the railroads would consider CWR into which a joint has been installed (to repair a rail break or remove a detected defect, for example) to be jointed rail and no longer subject to the railroad's CWR maintenance policy. FRA's position is that rail designated as CWR when installed remains CWR irrespective of whether it contains a joint or joints.

F. Ballast

In its ongoing review of CWR plans, FRA noted that some track owners included a definition of what constitutes ''sufficient ballast'' in their plans. Some plans cited specific measurements prescribing the amount of ballast appropriate for various track locations. During the Working Group meetings, labor representatives proposed that FRA adopt a definition of minimum sufficient ballast. The labor representatives also requested additional information from the Volpe Center to address concerns about how track ballast affects track strength. The ensuing discussion highlighted the fact that the track owners' CWR plans (which are submitted to FRA) are supplemented in practice by additional railroad-specific policies and procedures (''best practices'') which are often more restrictive. Rail carrier representatives were reluctant to have explicit ballast requirements in their CWR plans, due to the concern that ballast conditions may not always be maintained to the presumably more stringent internal standards.

The Track Safety Standards define ballast in § 213.103 as material which will transmit and distribute the load of the track and railroad rolling equipment to the subgrade; restrain the track laterally, longitudinally, and vertically under dynamic loads imposed by railroad rolling equipment and thermal stress exerted by the rails; provide adequate drainage for the track; and maintain proper track crosslevel, surface, and alinement. It is FRA's position that § 213.103 appropriately defines the term ''ballast'' for use by the regulated industry.

G. Anchoring

The Working Group discussed rail anchoring specifically in terms of controlling longitudinal force near joints installed at the end of CWR strings and near joints within CWR strings. A CWR string is understood to be a length of CWR rail set aside by the railroad for installation in the track. Of concern is the relative effectiveness of anchoring patterns—every tie versus every other tie in conventional, wood tie construction. Railroads typically do not change anchoring patterns when installing joints within CWR strings, and generally have policies to remove the joint when practical. At the end of CWR strings some railroads under certain circumstances box-anchor every tie for a prescribed distance to help control the longitudinal forces at the transition. This is not a universally accepted practice. The primary effect of this practice is to reduce the longitudinal force carried by the joint when the rail is in tension. As the force carried by the joint increases, the predicted life of the joint shortens. Please *see* the discussion in the Section-by-Section Analysis for § 213.119(c) to see the options that FRA gives track owners to strengthen a joint by relieving the tensile forces that it endures.

The Working Group also focused on when the joint would be removed, and proposed time limits for certain actions based on the performance of the joint in practice. One of the concerns is that as the joint fails the existing stress-free temperature of the rail may significantly be reduced, and, hence, require subsequent adjustment. Although the technical aspects of this issue were agreed upon by the Working Group, consensus was not reached on including specific requirements in the regulatory text. Please *see* the Section-by-Section Analysis for further discussion on this issue.

V. Response to Public Comment

FRA received comments from the American Association for Justice, AAR, BMWED, Metra, and NTSB during the public comment period for the NPRM. FRA has reviewed and analyzed each issue brought up by the comments, which the agency will address in this discussion and in the final rule text.

Preemption

The American Association for Justice (AAJ) commented that FRA should revise its section entitled ''Executive Order 13132'' to delete any language regarding the preemption of State common law claims. AAJ stated that, contrary to the agency's assertions, the former Federal Railroad Safety Act of 1970 (FRSA) does not authorize the preemption of State common law claims. AAJ claimed that FRA regulations have never lawfully preempted State law claims. The petition also stated that Congress reiterated its intent to preserve State tort claims against negligent railroads. Finally, AAJ argued that agency rules must clearly follow the FRSA's limited preemption language, and that State common law should govern railroad safety issues.

Contrary to AAJ's claim, FRA's Federalism Statement correctly recites that the rule preempts State common law standards of care. The Supreme Court has spoken clearly on the subject of preemption State common law by 49 U.S.C. 20106 (Section 20106). The question was squarely presented to the Court in *CSX Transp., Inc.* v. *Easterwood*, 507 U.S. 658 (1993), in which one of the respondent's claims was that, despite FRA's track standards (49 CFR part 213) which permit a maximum speed of 60 m.p.h. over the class four track involved in the case and train speed at the collision below 60 m.p.h., ''petitioner [CSX] breached its common-law duty to operate its train at a moderate and safe rate of speed.'' *Id.* at 673. The Court's answer was ''[w]e hold that, under the FRSA, Federal regulations adopted by the Secretary of Transportation pre-empt respondent's negligence action only insofar as it asserts that petitioner's train was traveling at an excessive speed.'' *Id.* at 676. In reaching that judgment, the Court reasoned that ''[a]ccording to § [20106], applicable Federal regulations may pre-empt any State 'law, rule, regulation, order, or standard relating to railroad safety.' Legal duties imposed on railroads by the common law fall within the scope of these broad phrases.'' *Id.* at 664. The Supreme Court very plainly held that the State common-law standard of care was preempted by FRA's Track Safety Standards, but that the underlying negligence action was not. That is completely in accord with the amendment Congress enacted to Section 20106 in section 1528 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Commission Act of 2007).

The Supreme Court's interpretation of Section 20106 was confirmed and further explained in a subsequent case also involving a grade crossing wreck, but alleging that the railroad negligently failed to maintain adequate warning devices at the grade crossing in question. The Supreme Court held:

> Sections 646.214(b)(3) and (4) [the Federal Highway Administration regulations mandating the installation of particular warning devices when certain conditions exist] ''cover the subject matter'' of the adequacy of warning devices installed with the participation of Federal funds. As a result, the FRSA pre-empts respondent's State tort claim that the advance warning signs and reflectorized crossbucks installed at the Oakwood Church Road crossing were inadequate. Because the TDOT used Federal funds for the signs' installation, §§ 646.214(b)(3) and (4) governed the

selection and installation of the devices. And because the TDOT determined that warning devices other than automatic gates and flashing lights were appropriate, its decision was subject to the approval of the FHWA. *See* § 646.214(b)(4). Once the FHWA approved the project and the signs were installed using Federal funds, the Federal standard for adequacy displaced Tennessee statutory and common law addressing the same subject, thereby pre-empting respondent's claim.

Norfolk Southern Ry. Co. v. *Shanklin,* 529 U.S. 344, 358–359 (2000). It could not be clearer that, before Congress amended Section 20106 in 2007, it provided for preemption of State common law by DOT regulations.

Congress was moved to amend Section 20106 by two court cases, *Lundeen* v. *Canadian Pacific Ry. Co.*, 507 F.Supp.2d 1006 (D.Minn. 2007), and *Mehl* v. *Canadian Pacific Ry., Ltd.*, 417 F.Supp.2d 1104 (D.N.D. 2006), which left without a legal remedy tort plaintiffs injured in a hazardous material release from a train wreck in Minot, North Dakota. The judge's opinion in *Lundeen* said:

> Preemption bars private claims for FRA violations. Congress has given the Secretary of Transportation ''exclusive authority'' to impose civil penalties and request injunctions for violations of the railroad safety regulations. FN4 49 U.S.C. 20111(a); *Abate* v. *S. Pac. Transp. Co.*, 928 F.2d 167, 170 (5th Cir. 1991) (''The structure of the FRSA indicates that Congress intended to give Federal agencies, not private persons, the sole power of enforcement.'').
>
> FN4. The single exception to the Secretary's exclusive authority exists when the Federal government fails to act promptly. In such cases, State government agencies can file suit, impose penalties, or seek injunctions. 49 U.S.C. 20113.
>
> Indeed, the FRSA has ''absolved railroads from any common law liability for failure to comply with the safety regulations.'' *Mehl*, 417 F.Supp.2d at 1120. This is the regulatory scheme which Congress has imposed. And when Congress has clearly spoken, any relief from its regime must come from Congress rather than the Courts. Private actions against railroads based on Federal regulations are preempted.

Lundeen, supra at 1016.

The amendment to Section 20106 made by section 1528 of the 9/11 Commission Act of 2007 did not change the text the Supreme Court had interpreted. Instead, Congress enacted a very precise cure for the problem presented by *Lundeen* and *Mehl* by amending Section 20106 to renumber the then-existing language as subsection (a), and adding two new subsections as follows:

(b) *Clarification regarding State law causes of action.*—(1) Nothing in this section shall be construed to preempt an action under State law seeking damages for personal injury, death, or property damage alleging that a party—

(A) Has failed to comply with the Federal standard of care established by a regulation or order issued by the Secretary of Transportation (with respect to railroad safety matters), or the Secretary of Homeland Security (with respect to railroad security matters), covering the subject matter as provided in subsection (a) of this section;

(B) Has failed to comply with its own plan, rule, or standard that it created pursuant to a regulation or order issued by either of the Secretaries; or

(C) Has failed to comply with a State law, regulation, or order that is not incompatible with subsection (a)(2).

(2) This subsection shall apply to all pending State law causes of action arising from events or activities occurring on or after January 18, 2002.

(c) *Jurisdiction.*—Nothing in this section creates a Federal cause of action on behalf of an injured party or confers Federal question jurisdiction for such State law causes of action.

New subsection (b) clarifies that, as the Supreme Court held in *Easterwood*, regulations or orders issued by the Secretary of Transportation preempt the State standard of care, but not the underlying cause of action in tort, thereby preserving the ability of injured parties to seek redress in court.

Since FRA's Track Safety Standards (49 CFR part 213) were involved in both *Easterwood* and *Lundeen*, they are especially apt for illuminating FRA's interpretation of the amended statute. The Track Safety Standards substantially subsume the subject matters of standards for railroad track and train speeds over it and, therefore, preempt State standards, both statutory and common law, pertaining to those subjects. Nevertheless, under Section 20106(b)(1)(A), a private plaintiff may bring a tort action for damages alleging injury as a result of violation of the Track Safety Standards, such as train speed exceeding the maximum speed permitted under 49 CFR 213.9 over the class of track being traversed. Similarly, under Section 20106(b)(1)(B), a private plaintiff may bring a tort action for damages alleging injury as a result of violation of a railroad's CWR plan required by the Track Safety Standards (the key issue in *Lundeen*). Provisions of a railroad's CWR plan which exceed the requirements of this part are not included in the Federal standard of care. Under Section 20106(b)(1)(C), a private plaintiff may bring a tort action for damages alleging injury as a result of violation of a State law, regulation, or order that is not incompatible with subsection (a)(2), such as Ohio's regulation of minimum track clearances in rail yards found not to be preempted in *Tyrrell* v. *Norfolk Southern Ry. Co.*, 248 F.3d 517 (6th Cir. 2001).

It is a settled principle of statutory construction that, if the statute is clear and unambiguous, it must be applied according to its terms. *Carcieri* v. *Salazar*, 555 U.S.—(2009). Read by itself, Section 20106(a) preempts State standards of care, but does not expressly state whether anything replaces the preempted standards of care for purposes of tort suits. The focus of that provision is clearly on who regulates railroad safety: The Federal government or the States. It is about improving railroad safety, for which Congress deems nationally uniform standards to be necessary in the great majority of cases. That purpose has collateral consequences for tort law which new Section 20106 subsections (b) and (c) address. New subsection (b)(1) creates three exceptions to the possible consequences flowing from subsection (a). One of those exceptions ((b)(1)(B)) precisely addresses an issue presented in *Lundeen* Congress wished to rectify: it allows plaintiffs to sue a railroad in tort for violation of its own plan, rule, or standard that it created pursuant to a regulation or order issued by either of the Secretaries. That provision satisfies the arguments made in the Petition concerning the State tort claims Congress intended to preserve. None of those exceptions covers a plan, rule, or standard that a regulated entity creates for itself in order to produce a higher level of safety than Federal law requires, and such plans, rules, or standards were not at issue in *Lundeen.* The key concept of Section 20106(b) is permitting actions under State law seeking damages for personal injury, death, or property damage to proceed using a Federal standard of care. A plan, rule, or standard that a regulated entity creates pursuant to a Federal regulation logically fits the paradigm of a Federal standard of care—Federal law requires it and determines its adequacy. A plan, rule, or standard, or portions of one, that a regulated entity creates on its own in order to exceed the requirements of Federal law does not fit the paradigm of a Federal standard of care—Federal law does not require it and, past the point at which the requirements of Federal law are satisfied, says nothing about its adequacy. That is why FRA believes Section 20106(b)(1)(B) covers the former, but not the latter. The basic purpose of the statute—improving railroad safety—is best served by encouraging regulated entities to do more than the law requires and would

be disserved by increasing the potential tort liability of regulated entities that choose to exceed Federal standards, which would discourage them from ever exceeding Federal standards again.

In this manner, Congress adroitly preserved its policy of national uniformity of railroad safety regulation expressed in Section 20106(a)(1) and assured plaintiffs in tort cases involving railroads, such as *Lundeen*, of their ability to pursue their cases by clarifying that Federal railroad safety regulations preempt the standard of care, not the underlying causes of action in tort. Under this interpretation, all parts of the statute are given meanings that work together effectively and serve the safety purposes of the statute. Because the language of the statute is clear, there is no need to resort to the legislative history to properly interpret the statute. *See Ratzlaf* v. *United States*, 510 U.S. 135, 147–148 (1994) (''[W]e do not resort to legislative history to cloud a statutory text that is clear'').

Disapproval of CWR plans

BMWED strongly argued that it believes that FRA should disapprove, for cause stated, CWR plans within a specific time period so as not to allow a non-conforming plan to remain in effect for an extended period of time. Should manpower at FRA be an impediment to incorporating such specific time frames for disapproval of all track owners' CWR plans, BMWED argues that FRA should, at a minimum, adopt its suggested time frame of review of 5 months for Class I railroads, 10 months for Class II railroads, and 15 months for Class III railroads.

FRA appreciates BMWED's concerns, and has developed a good solution to this issue. FRA decided to have this final rule effective at different dates based on the Class of railroad. This final rule is effective 45 days after the publication date for Class I railroads, 90 days after the publication date for Class II railroads, and 180 days after the publication date for Class III railroads. Also, FRA has developed a new section, 213.118, which more clearly outlines FRA's plan review and approval process. Please *see* the extensive discussion on this section below.

CWR Joint Bolt Requirements

The AAR is not in favor of including § 213.119(c), which describes CWR joint installation and maintenance procedures, contending that its inclusion robs the industry of necessary future flexibility. These representatives did not believe it was necessary to incorporate the text into the rule if FRA knew that they had already proposed to add the text to their individual CWR plans. The AAR members in the Working Group also argued this point during the meetings, stating that including this paragraph constituted ''regulatory creep.'' BMWED, on the other hand, agreed with the proposed text. FRA strongly feels that inclusion of the paragraph is necessary. With the history of high-profile derailments on CWR due to joint bar failure, as discussed in the October 11, 2006 final rule (71 FR 59677), FRA stresses the importance for CWR track owners to follow the installation and maintenance procedures in this paragraph. FRA also notes that the maintenance procedures were analyzed and discussed at length by the Working Group and found to represent sound industry guidance to avoid a derailment on CWR track due to poor joint installation or maintenance.

The BMWED mentioned that § 213.119(c)(3) should specify ''bar(s)'' instead of ''bar.'' FRA agrees with this assessment and has changed the final rule text accordingly. FRA has also elected to slightly revise the text to make the requirements more uniform.

Rail Neutral Temperature

In its comment, Metra argues that hunting,[3] a significant source for imposed dynamic lateral loading, typically occurs in lightly loaded commuter cars at about 60 mph in contrast to the typical onset of hunting in freight cars at about 40 mph. The commenter suggests that, for passenger and commuter trains, ''Rail that has pulled apart, broken, or been cut for defect removal must be readjusted such that its neutral temperature is within the safe range. If the rail has not been so readjusted before the rail temperature exceeds a prescribed value, the railroad would either: (1) Apply a speed restriction of 25 mph, or (2) apply a speed restriction reducing the speed by one class of track or operate at 40 mph, whichever was greater, in conjunction with a daily inspection of the rail made during the heat of the day.'' Thus, commuter railroads would reduce speed to 60 mph for passenger operations and inspect the location during the heat of the day or otherwise have to reduce the speed to 25 mph if the inspection could not be done during the heat of the day.

FRA responds that, while this is an important issue, it is not one that the agency has chosen to cover in the final regulatory text. The issue was mentioned in FRA's preamble discussion of the NPRM as an example of a technical issue that the Working Group discussed. FRA highlighted this issue as one that the agency would take into consideration when reviewing CWR plans. Pursuant to § 213.119(f), the track owner must describe in its plan procedures which govern train speed on CWR track when maintenance work, track rehabilitation, track construction, or any other event occurs which disturbs the roadbed or ballast section and reduces the lateral or longitudinal resistance of the track, and the difference between the average rail temperature and the average rail neutral temperature is in a range that causes buckling-prone conditions to be present at a specific location. FRA instructs all track owners to specifically describe in their plans how they intend to do this. FRA will review all plans for compliance with § 213.119(f).

Inspection Interval

AAR proposes that FRA return to the ''intent of the current regulations and RSAC's intent by requiring railroads to specify when inspections should occur due to ambient temperature.'' AAR argues that FRA offers no explanation of why it proposes to require railroads to specify an inspection interval at § 213.119(g)(2) or what it expects railroads to do to comply with such a requirement. FRA understands the confusion that the wording in the NPRM could have caused. Therefore, FRA has slightly modified the text in response to AAR's comment. The final rule states that the plan must ''specify when the inspections will be conducted.''

Fracture Reports

NTSB noted that a track owner must generate a Fracture Report for every cracked or broken CWR joint bar and conduct special inspections to locate the defective joint bar. The track owner then sends this data to FRA for review and analysis so that FRA can assess the validity of joint bar inspections and determine their proper frequency or adjustment. NTSB is concerned that, after February 10, 2010, a track owner may petition FRA to conduct a technical conference to review the Fracture Report data and to assess whether there is a continued need for the collection of data. NTSB is concerned that FRA may authorize track owners to discontinue collecting fracture data that could help evaluate whether a railroad's CWR plan adequately addresses problematic joints. NTSB argues that the collection and assessment of fracture data are important and should continue.

FRA appreciates NTSB's concern with regard to the importance of Fracture

[3] Truck hunting is a rapid oscillation of a car truck usually occurring at speeds in excess of 45 miles per hour in cars that are empty or lightly loaded, where the flanges tend to ride up on the head of the rail.

Reports, and also notes that FRA did not change the requirement of Fracture Reports with this final rule. Indeed, a track owner must continue to submit a Fracture Report to FRA for every cracked or broken CWR joint bar that is discovered during the course of an inspection pursuant to §§ 213.119(h), 213.233 or 213.235 on track that is required under § 213.119(h)(6)(i) to be inspected. FRA believes that NTSB's concern is premature for purposes of this rulemaking. FRA advises that the appropriate time to bring forth this concern would be at a technical conference called by FRA to assess whether there is a continued need for the collection of Fracture Report data.

Additional Comments

NTSB pointed out that, under § 213.119, a track owner could submit one plan to FRA, but then operate using a more restrictive plan. NTSB strongly argued that allowing a track owner to operate with two sets of CWR plans was not in the best interest of safety. Although FRA agrees with NTSB's comment that it is confusing to have two standards, FRA points out that the Track Safety Standards are minimum standards, and that the track owner is free to voluntarily follow more restrictive standards as a best practice.

AAR proposed that FRA eliminate the text at the end of § 213.121(f), which states that ''locations when over 400 feet in length (with no-slip, joint-to-rail contact), are considered to be continuous welded rail track and shall meet all the requirements for continuous welded rail track prescribed in this part.'' FRA has always considered no-slip joint-to-rail contact designed joints to not be a break in rail continuity, and thus be defined as CWR. To avoid any confusion on this issue, FRA has elected to leave this portion of § 213.121(f) intact.

AAR also proposed that FRA delete the last sentence in § 213.119(k), which requires that CWR procedures be ''maintained in one engineering standards and procedures manual.'' AAR claimed that it is not necessary to have all engineering standards and procedures in one document, but agrees that there is a benefit to having all CWR standards and procedures in one document. FRA agrees with this concern, and has changed the text to specify that CWR procedures be ''maintained in one CWR standards and procedures manual.''

Errata

Multiple commenters pointed out that the table at § 213.119(h)(6) contains inadvertent errors, which FRA has corrected with this final rule.

VI. Section-by-Section Analysis

Section 213.7 Designation of Qualified Persons to Supervise Certain Renewals and Inspect Track

FRA is revising § 213.7 principally by adding a new paragraph (c), which creates a new requirement for the track owner to specifically designate individuals who are qualified to inspect CWR track or supervise the installation, adjustment, and maintenance of CWR track in accordance with the track owner's written procedures. This paragraph require that the designated individual have: (1) Current qualifications under either paragraphs (a) or (b) of this section; (2) successfully completed a comprehensive training course specifically developed for the application of written CWR procedures issued by the track owner; (3) demonstrated to the track owner that he/she knows and understands the requirements of the written CWR procedures, can detect deviations from those requirements, and can prescribe appropriate remedial action(s) to correct or safely compensate for those deviations; and (4) written authorization from the track owner to prescribe remedial action(s) to correct or safely compensate for deviations from the requirements in the CWR procedures and successfully completed a recorded examination on the procedures as part of the qualification process to be made available to FRA.

FRA has determined that, as CWR track has characteristics inherently different than those of traditional jointed rail, track owners should be required to designate which individuals are specifically qualified to inspect, or supervise the installation, adjustment, and maintenance of CWR. In addition to the qualifications that an individual must have under paragraph (a) to perform track maintenance work, or the qualifications under paragraph (b) to inspect track, an individual designated under paragraph (c) will have to be well-versed in the maintenance of CWR track as detailed in the track owner's CWR plan.

For guidance, FRA originally looked to § 213.305(c), which regulates the requirements of an individual qualified to inspect CWR track or supervise the installation, adjustment, and maintenance of CWR in accordance with the track owner's written procedures for train operations at track classes 6 and higher. The Working Group discussed the merits of the requirement in § 213.305(c)(2), which states that an individual must have ''successfully completed a training course of at least eight hours duration specifically developed for the application of written CWR procedures issued by the track owner.'' Carrier representatives maintained that the requirement to have an eight-hour course would interfere with current training methods. As the FRA representatives agreed that the comprehensive nature of the training course is more important than its duration, the Working Group reached consensus that the individual would have to successfully complete a comprehensive training course pursuant to paragraph (c)(2), which does not specify the duration of the training.

The Working Group also discussed the merits of requiring the individual to successfully complete an examination on the track owner's CWR procedures. In § 213.305(c)(4), individuals qualified on CWR for train operations at track classes 6 and higher must successfully complete a recorded examination on the track owner's CWR procedures. The paragraph states that this examination may be written, or it may be a computer file with the results of an interactive training course. Working Group members were concerned with the proposal that the examination be in a written context. It was argued that, quite often, a supervisor can better test someone's knowledge through practical application in the field as opposed to a written test. In order to accommodate this option for testing, FRA agreed to define the required examination in paragraph (c)(4) as ''recorded'' instead of written; therefore, track owners will have the flexibility to test an individual's knowledge how they best see fit. However, it should be noted that the results of the examination must be recorded so that FRA may inspect the basis for the qualification of an individual under paragraph (c).

In adding paragraph (c) to this section, FRA is redesignating former paragraphs (c) and (d) as paragraphs (d) and (e), respectively. FRA is also making conforming changes to these paragraphs to cross-reference the new paragraph (c), in the same way that the former paragraphs of this section are cross-referenced. Although FRA is setting out the entire text of these paragraphs for clarity, the changes to the redesignated paragraphs involve only adding the cross-reference to the introductory text of the paragraphs, and removing the superfluous reference ''of this part'' in redesignated paragraph (d)(4).

Section 213.118 Continuous Welded Rail (CWR); Plan Review and Approval

FRA is amending the Track Safety Standards by adding new § 213.118. FRA determined to cover the plan review and approval process in § 213.118, and the required contents of the plan in § 213.119. This section delineates the process for submitting a CWR plan for approval to FRA.

Paragraph (a). In this paragraph, FRA requires that each track owner with track constructed of CWR must have in effect and comply with a plan that contains written procedures which address: The installation, adjustment, maintenance, and inspection of CWR; inspection of CWR joints; and a training program for the applications of those procedures. This paragraph is based on the text that formerly appeared at § 213.119. FRA has not changed the substance of this requirement.

Paragraph (b). In this paragraph, FRA explains that the track owner must file its CWR plan with the FRA Associate Administrator for Railroad Safety/Chief Safety Officer (''Associate Administrator''). Within 30 days of receipt of the submission, FRA will review the plan for compliance with this subpart. FRA will approve, disapprove or conditionally approve the submitted plan, and will provide written notice of its determination. During Working Group discussions, FRA representatives expressed concern that this section's current introductory text does not explicitly address certain procedural issues associated with CWR plans. The previous text did not explain how a track owner would revise a CWR plan that has already been submitted to FRA, or what the process would be for FRA to require a revision to a plan, including the process to appeal a revision requirement. FRA is therefore clarifying that a track owner must file its CWR plan with the FRA Associate Administrator not less than 30 days before it implements its CWR plan, including submitting revisions to an existing CWR plan in order for the changes to take effect under the regulation.

In this paragraph, FRA decided that a plan may also be conditionally approved. FRA recognizes that there might be instances where it would be beneficial for the agency to conditionally approve a plan. For example, the agency might decide that a plan should be approved, but might need to look into new technology proposed in the plan. It is FRA's intent to later approve or disapprove a plan that it conditionally approves. FRA also intends to notify the track owner of a conditionally approved plan of the time that the agency anticipates it will require in order to make a final determination. So that FRA does not stall the implementation of a plan that would otherwise be approved, FRA has decided to allow a plan to be conditionally approved.

Paragraph (c). In this paragraph, FRA states that the track owner's existing plan shall remain in effect until the track owner's new plan is approved or conditionally approved and is effective pursuant to paragraph (d). In the Working Group discussions, it was brought up that FRA had previously been unclear in what plan would be in effect while FRA reviewed a new plan. In this new paragraph, FRA clarifies that the track owner's existing plan is to remain in effect until the new plan is approved or conditionally approved and is in effect.

Paragraph (d). In this paragraph, FRA states that the track owner must, upon receipt of FRA's approval or conditional approval, establish the plan's effective date. The paragraph also requires that the track owner advise, in writing, FRA and all affected employees of the effective date. FRA decided to promulgate this provision because track owners have expressed to FRA that they needed time to implement a plan once FRA has approved it. Indeed, FRA recognizes the time and effort that it takes to issue a new CWR plan, and wants to ensure that track owners have the time to do this once a new CWR plan is approved by FRA. Therefore, FRA has decided to let the track owner establish an effective date of its approved or conditionally approved CWR plan provided that FRA and all affected employees are advised of the effective date in writing.

Paragraph (e). In this paragraph, for cause stated, FRA may, subsequent to plan approval or conditional approval, require revisions to the plan to bring the plan into conformity with this subpart. Notice of a revision requirement shall be made in writing and specify the basis of FRA's requirement. The track owner may, within 30 days of the revision requirement, respond and provide written submissions in support of the original plan. FRA renders a final decision in writing. Not more than 30 days following any final decision requiring revisions to a CWR plan, the track owner shall amend the plan in accordance with FRA's decision and resubmit the conforming plan. The conforming plan becomes effective upon its submission to FRA.

If the review indicates that revisions to the plan are needed to bring the plan into compliance with the requirements of the rule, FRA will give notice of the revision requirement in writing to the track owner, including the basis of the revision requirement. FRA believes that this paragraph clarifies the process it will use when requiring CWR plans to be revised. It should be noted that, unlike when a plan is approved or conditionally approved, when a conforming plan that has been revised is submitted to FRA, it becomes effective on that date.

Section 213.119 Continuous Welded Rail (CWR); Required Plan Contents

FRA moved the text pertaining to CWR plan review and approval to new § 213.118. The introductory text to this section now states that the track owner must comply with the contents of the CWR plan approved or conditionally approved under § 213.118.

Paragraphs (a) and (b). Paragraphs (a) and (b) are published in their entirety with no changes.

Paragraph (c). FRA is designating previous paragraph (c) as paragraph (d), and adding a new paragraph (c) in its place. New paragraph (c) revises the requirements for CWR joint installation and maintenance procedures to be included in a track owner's CWR plan. The new paragraph requires that rail joints be installed per the requirement in § 213.121(e), which states, ''In the case of continuous welded rail track, each rail shall be bolted with at least two bolts at each joint.'' The new paragraph further states that, in the case of a bolted joint installed during CWR installation after the publication date of the final rule, within 60 days the track owner must either: (1) Weld the joint; (2) install a joint with six bolts; [4] or (3) anchor every tie 195 feet in both directions of the joint. Finally, the new paragraph states that, in the case of a bolted joint in CWR experiencing service failure or a failed bar with a rail gap present, the track owner must either: (1) Weld the joint; or (2) replace the broken bar(s), replace the broken bolts, adjust anchors and weld the joint within 30 days; or (3) replace the broken bar(s), replace the broken bolts, install one additional bolt per rail end, and adjust the anchors; or (4) replace the broken bar(s), replace the broken bolts, and anchor every tie 195 feet in both directions from the CWR joint; or (5) replace the broken bar(s), replace the broken bolt(s), add rail with provisions for later adjustment pursuant to (d)(2) of this section, and reapply anchors. Per

[4] *See* 49 CFR 213.121(e), stating that, in the case of CWR, each rail shall be bolted with at least two bolts at each joint. This is a total of four bolts required at each joint.

BMWED's comment, FRA is adding the option of ''bars'' to (c)(3) and (c)(4) and making other modifications to the wording of this requirement.

FRA noted during Working Group discussions that this section lacked an explicit reference to how a rail joint in CWR shall be bolted. As this requirement appears in § 213.121(e), FRA decided that it would be prudent to also state this requirement in § 213.119 so as to include all requirements for CWR in one section. This requirement serves as a reminder to track owners that they cannot create their own joint bolt requirements in their CWR plans that are less restrictive than those specified in the regulation.

As previously mentioned, the Working Group was not able to reach consensus on paragraph (c). However, virtually identical text was included and discussed in the generic CWR plan generated by the rail carrier representatives, as discussed above. The rail carrier representatives were not in favor of including this paragraph, contending that its inclusion would constitute ''regulatory creep.'' These representatives did not believe it was necessary to incorporate the text into the rule if FRA knew that they had already proposed to add the text to their individual CWR plans. AAR argued this same point in its comment on the NPRM. BMWED, on the other hand, agreed with the proposed text. FRA strongly feels that inclusion of the paragraph is necessary. With the history of high-profile derailments on CWR due to joint bar failure, as discussed in the October 11, 2006 final rule (71 FR 59677), FRA stresses the importance for CWR track owners to follow the installation and maintenance procedures in this paragraph. FRA also notes that the maintenance procedures were analyzed and discussed at length by the Working Group and found to represent sound industry guidance to avoid a derailment on CWR track due to poor joint installation or maintenance.

Paragraph (d). FRA is redesignating previous paragraph (c) as paragraph (d). No substantive change to this paragraph's requirements is intended.

Paragraph (e). FRA is redesignating previous paragraph (d) as paragraph (e). No substantive change to this paragraph's requirements is intended.

Paragraph (f). FRA is redesignating previous paragraph (e) as paragraph (f). FRA is also revising paragraph (f)'s format to more clearly identify its requirements and add a new paragraph (f)(2) which requires the track owner to have procedures in the CWR plan that govern train speed when the difference between the average rail temperature and the rail neutral temperature is in a range that causes buckling-prone conditions to be present at a specific location. ''Rail temperature'' is defined as ''the temperature of the rail, measured with a rail thermometer,'' and, as discussed in redesignated paragraph (l), below, FRA is adding a definition for ''rail neutral temperature'' (RNT) as ''the temperature at which the rail is neither in compression nor in tension.'' When maintaining the integrity of CWR track, the track owner needs to be concerned not only with the actual rail temperature, but also with the rail neutral temperature. FRA notes that the track owner also has the responsibility to quantify the rail neutral temperature of all CWR track.

There have been a significant number of derailments caused by buckled track. Because of this safety concern, FRA is requiring track owners to reduce train speed over areas where there is an increased possibility of track buckling. By reducing the train speed, FRA anticipates that track owners will be able to reduce the probability of a catastrophic derailment caused by track buckling.

Paragraph (g). FRA is redesignating previous paragraph (f) as paragraph (g). FRA is also revising the requirements of this paragraph by specifying that track owners must have in their CWR plans procedures which prescribe when physical track inspections are to be performed to detect not only buckling-prone conditions, but also pull-apart prone conditions.

This paragraph previously focused only on when physical track inspections were required to identify buckling-prone conditions in CWR track. The requirements for these inspections to detect buckling-prone conditions have not been changed. In paragraph (g)(1)(i), track owners are still be required to have procedures in their CWR plans that address inspecting track to identify buckling-prone conditions in CWR, which include: (A) Locations where tight or kinky rail conditions are likely to occur, and (B) locations where track work of the nature described in redesignated paragraph (f)(1) of this section have recently been performed. As discussed above, redesignated paragraph (f)(1) describes maintenance work, track rehabilitation, track construction, or any other event which disturbs the roadbed or ballast section and reduces the lateral or longitudinal resistance of the track. The track owner also continues to specify when the inspections will be conducted as well as the appropriate remedial actions to be taken when buckling-prone conditions are found, as provided in paragraph (g)(2), discussed further below.

Pull-apart prone conditions are addressed with the addition of paragraph (g)(1)(ii), which requires the track owner to include procedures in its CWR plan that prescribe when physical track inspections are to be performed to identify pull-apart prone conditions in CWR track. The procedures must include locations where pull-apart or stripped-joint rail conditions are likely to occur. As provided in paragraph (g)(2), the track owner must also specify when the inspections will be conducted and the appropriate remedial actions to be taken when pull-apart prone conditions are found. Paragraph (g)(2) is based on the previous text of paragraph (f)(2), which addressed buckling-prone conditions, expanding it to address pull-apart prone conditions as well.

The Working Group discussed that changes in temperature can greatly affect the integrity of CWR. Typically, significant increases in rail temperature can cause buckling-prone conditions, and significant decreases in rail temperature can cause pull-apart prone conditions. FRA has chosen not to quantify the specific temperatures that would cause a buckling-prone condition or a pull-apart prone condition. The Working Group discussed that, given the varied geographical composition of each railroad entity, specifying these temperatures would be best left to the track engineering program of each track owner. Therefore, FRA has declined to specify at what temperatures a physical track inspection under paragraph (g)(1) would be required, choosing instead to require that the track owner identify the conditions and situations when a physical track inspection would need to occur due to a buckling-prone or pull-apart prone condition.

Paragraph (h). FRA is redesignating previous paragraph (g) as paragraph (h). FRA is not substantively changing the requirements of this paragraph. FRA is only making conforming amendments to cross-references in this paragraph to reflect the redesignation of the paragraphs in the section.

Paragraph (i). FRA is redesignating previous paragraph (h) as paragraph (i). FRA is also revising this paragraph by requiring the track owner to have in effect a comprehensive training program for the application of its written CWR procedures with provisions for annual re-training for individuals designated under § 213.7(c) to supervise the installation, adjustment, and maintenance of CWR track and to perform inspections of CWR track. Additionally, FRA is requiring that the track owner make the training program

available for review by FRA upon request.

This paragraph previously required that the track owner's training program have provisions for ''periodic'' re-training of qualified individuals. The Working Group discussed this requirement and advised that the term ''periodic'' was undesirably vague. A brief, informal survey at one of the Working Group meetings revealed that some rail carriers re-trained individuals every year, while others re-trained individuals every two or three years. FRA identified that a leading cause of carrier non-compliance with § 213.119 is a lack of training among individuals qualified to supervise the installation, adjustment, and maintenance of CWR track and to perform inspections of CWR track. The AR Task Force's study showed that a significant number of accidents/incidents could be attributed to the failure to comply with the track owner's CWR policy. In order to address this serious safety concern, FRA determined that it was necessary to state more specifically when qualified individuals must be re-trained.

Within the Working Group, FRA representatives proposed to revise this paragraph by specifying the months or days that should pass between the re-training of qualified individuals. Rail carrier representatives stated that this would not give them the flexibility to train individuals at pre-determined training classes and would add to operational costs. In order to address the concerns of the rail carrier representatives, FRA agreed that it would be sufficient to require annual re-training of individuals. FRA notes that, for purposes of this paragraph, ''annual'' means ''calendar year,'' as opposed to a 365-day period.

As FRA is amending § 213.7 to include paragraph (c) that explicitly addresses how a track owner designates an individual as qualified to supervise the installation, adjustment, and maintenance of CWR track and to perform inspections of CWR track, FRA decided that it was necessary to include a reference to § 213.7(c) in this revision to § 213.119(i).

In paragraph (i), FRA is also requiring that the track owner make the training program available for review by FRA upon request. Due to the unique and individual nature of training programs, FRA determined that it would not be cost-effective for the agency to examine the training program of each track owner in addition to its CWR plan any time a change is made to the plan. However, particularly in the event of non-compliance with the CWR regulations, FRA believes that it should have the option of examining how qualified individuals are trained to apply the track owner's written CWR procedures.

During the Working Group's meetings, Class I railroad representatives agreed to voluntarily make an initial submission of their CWR training programs to FRA. FRA also agreed that, in its Track Safety Standards Compliance Manual, track inspectors will be instructed not to request the training program of a specific track owner unless under the specific direction of FRA management. Rather, FRA's headquarters staff will undertake the responsibility of obtaining and disseminating this information, as needed, to both FRA inspectors and inspectors from States participating in rail safety enforcement activities under 49 CFR part 212.

Paragraph (j). FRA is redesignating previous paragraph (i) as paragraph (j). FRA is not substantively changing the requirements of this paragraph, however. FRA is only making a conforming change to the cross-reference to another paragraph in this section, due to the redesignation of the paragraphs in this section, and to correct the cross-reference so that it references ''this section''—not ''this part.''

Paragraph (k). FRA is adding a new paragraph (k) that requires the track owner to make readily available, at every job site where personnel are assigned to install, inspect or maintain CWR, a copy of the track owner's CWR procedures and all revisions, appendices, updates, and referenced materials related thereto prior to their effective date. Additionally, such CWR procedures are required to be issued and maintained in one comprehensive CWR standards and procedures manual.

Since the implementation of the CWR regulations, FRA has noted that a number of rail carriers maintain two different sets of CWR procedures; rail carriers have been discovered to maintain the set of CWR procedures submitted to FRA pursuant to this § 213.119, as well as maintain a separate set of CWR procedures to be used by personnel in the field. While FRA takes no issue with a rail carrier instructing its personnel to maintain more restrictive CWR procedures in the field than what is on file with FRA, FRA stresses that rail carriers are required to train their personnel on the plan on file with FRA. While FRA continues to enforce the CWR plan on file with its Office of Railroad Safety, having the procedures required to be at every job site where personnel are assigned to install, inspect or maintain CWR will ensure that personnel in the field understand which set of procedures FRA will hold them responsible for compliance with pursuant to the Federal regulations. Although FRA agrees with NTSB's comment that it is confusing to have two standards, FRA points out that the Track Safety Standards are minimum standards, and that the track owner is free to voluntarily follow more restrictive standards as a best practice.

Paragraph (l). FRA is redesignating former paragraph (j) as paragraph (l). This paragraph contains definitions to be used in connection with this section. FRA is revising two existing definitions, removing a definition, adding five new definitions, and making non-substantive changes to correct the capitalization of the definitions. Specifically, FRA is changing the definition of ''continuous welded rail (CWR)'' to mean ''rail that has been welded together into lengths exceeding 400 feet. Rail installed as CWR remains CWR, regardless of whether a joint or plug is installed into the rail at a later time.'' As a consequence of this change, FRA is also changing the definition of ''CWR joint'' to mean ''any joint directly connected to CWR.'' (''CWR joint'' had been defined as ''(a) any joint directly connected to CWR, and (b) any joint(s) in a segment of rail between CWR strings that are less than 195 feet apart, except joints located on jointed sections on bridges.'')

The Working Group discussed that the current definition of CWR, which does not include a reference to a joint or plug, does not fully address the reality of CWR in the industry. When the previous definition of CWR was read with the previous definition of CWR joint, one could wrongly conclude that, by adding a joint or plug into a section of CWR track, the track would no longer be defined as CWR track. Indeed, it was agreed upon by the members of the Working Group that CWR track generally maintains its CWR properties whether or not a joint or plug is added to the track at a later date. Therefore, the Working Group recommended that the definition be revised to specify that rail installed as CWR remains as CWR, regardless of whether a joint or plug is installed into the rail at a later date.

Due to the decision to revise the definition of CWR, the Working Group determined that the definition of CWR joint should also be revised. As the new definition of CWR would explain that CWR track remains as CWR, regardless of whether a joint or plug is installed into the rail at a later date, the definition of CWR joint would no longer need to specify that a CWR joint is a joint in a segment of rail between CWR strings that are less than 195 feet apart. Since

rail installed as CWR remains as CWR with the new definition, FRA is revising the definition of CWR joint to simply be ''any joint connected to CWR.''

FRA is removing the definition ''action items,'' because the term is not expressly used in this section. Previously, ''actions items'' were defined as ''the rail joint conditions that track owners identify in their CWR plans pursuant to paragraph (g)(3) which require the application of a corrective correction.'' Paragraph (g)(3) itself provides that, in formulating procedures which prescribe the scheduling and conduct of inspections to detect cracks and other indications of potential failures in CWR joints, the track owner specify the conditions of actual or potential joint failure for which personnel must inspect. Current paragraph (g)(3) further provides that these conditions include, at a minimum, the following items: (i) Loose, bent, or missing joint bolts; (ii) rail end batter or mismatch that contributes to instability of the joint; and (iii) evidence of excessive longitudinal rail movement in or near the joint, including, but not limited to, wide rail gap, defective joint bolts, disturbed ballast, surface deviations, gap between tie plates and rail, or displaced rail anchors. The term ''action items'' is not used in this paragraph, however. FRA is redesignating paragraph (g)(3) as paragraph (h)(3), for formatting purposes only due to the addition of new paragraphs in this section. FRA does not intend to make any change to the substance of this paragraph, and removing the definition of ''action items'' is not intended to have any effect on what items are considered defects under the provisions of the rule.

At the same time, FRA is adding the new definition of ''rail neutral temperature'' to mean ''the temperature at which the rail is neither in compression nor tension.'' This definition is necessary because FRA is adding new paragraph (f)(2), which utilizes the term ''rail neutral temperature.'' In paragraph (f)(2), FRA requires track owners to have procedures that govern train speed when the difference between the average rail temperature and the rail neutral temperature is in a range that causes buckling-prone conditions to be present at a specific location. When maintaining the integrity of CWR track, the track owner has to be concerned with not only the actual rail temperature of the rail, but the rail neutral temperature as well. FRA decided that it was necessary to include in the regulation a definition of rail neutral temperature to clarify what temperature the track owner should be concerned with when preventing rail buckling. While FRA has provided a definition of ''rail neutral temperature,'' it is the responsibility of the track owner to quantify the rail neutral temperature at specific locations.

FRA has also chosen to add a definition for ''annual re-training.'' In paragraph (i) of § 213.119, FRA requires that the track owner shall have in effect a comprehensive training program for the application of these written CWR procedures, with provisions for annual re-training, for those individuals designated under § 213.7(c) as qualified to supervise the installation, adjustment, and maintenance of CWR track and to perform inspections of CWR track. FRA notes that, for purposes of this paragraph, ''annual'' means ''calendar year,'' as opposed to a 365-day period.

Finally, FRA has also chosen to add a couple of definitions to clarify terms that are used throughout § 213.119. Specifically, FRA has added a definition for a ''buckling- prone condition,'' a ''pull-apart or stripped joint,'' and a ''pull-apart prone condition.'' A ''buckling-prone condition,'' is when the actual rail temperature is above the actual rail neutral temperature, which will vary, given the geographical composition of the track. A ''pull-apart or stripped joint'' are interchangeable terms used to describe a condition where no bolts are mounted through the holes of a joint bar on the rail end, rendering the joint bar ineffective due to excessive expansive or contractive forces. A ''pull-apart prone condition'' is when the actual rail temperature is below the rail neutral temperature at or near a joint where longitudinal tensile forces may affect the fastenings at the joint.

Appendix B to Part 213—Schedule of Civil Penalties

Appendix B to part 213 contains a schedule of civil penalties for use in connection with this part. FRA is revising the schedule of civil penalties in issuing the final rule to reflect the addition of § 213.118 and revisions made to § 213.119.

VII. Regulatory Impact

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing policies and procedures and determined to be non-significant under both Executive Order 12866 and DOT policies and procedures. *See* 44 FR 11034; February 26, 1979. As part of the regulatory impact analysis, FRA has assessed quantitatively the costs and benefits expected from the implementation of this final rule. FRA has determined that none of the provisions would have a major impact. If FRA's main assumptions are correct, the sum of the net benefit of all provisions would be $390,000 per year. The cost per year is estimated at $300,000 for the first year, and $150,000 per year for subsequent years. The total net benefit would then be $90,000 for the first year and $240,000 per year for subsequent years. The analysis has a range of assumptions to check sensitivity. Under the least favorable assumptions the rule would develop net societal costs, but those are apparently extreme assumptions. Under the most favorable assumptions the net benefits would be up to $1,140,000 per year. In no event would the net benefits or costs constitute more than a very small portion of the total railroad expenditures on CWR rail maintenance.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (the Act) (5 U.S.C. 601 *et seq.*) requires a review of proposed and final rules to assess their impact on small entities. The U.S. Small Business Administration (SBA) stipulates in its ''Size Standards'' that the largest a railroad business firm that is ''for-profit'' may be, and still be classified as a ''small entity,'' is 1,500 employees for ''Line-Haul Operating Railroads,'' and 500 employees for ''Switching and Terminal Establishments.'' ''Small entity'' is defined in the Act as a small business that is independently owned and operated, and is not dominant in its field of operation. SBA's ''Size Standards'' may be altered by Federal agencies after consultation with SBA and in conjunction with public comment. Pursuant to that authority, FRA has published a final policy that formally establishes ''small entities'' as railroads which meet the line haulage revenue requirements of a Class III railroad. The revenue requirements are currently $20 million or less in annual operating revenue. The $20 million limit (which is adjusted by applying the railroad revenue deflator adjustment) is based on the Surface Transportation Board's (STB) threshold for a Class III railroad carrier. FRA uses the same revenue dollar limit to determine whether a railroad or shipper or contractor is a small entity.

Approximately 200 small railroads have CWR and may be affected by this final rule. Relatively few Class III railroads have CWR. For the minority of Class III railroads that have CWR, the portion of each such railroad made up

of CWR is more likely to be small. To the extent these railroads have CWR, Class III railroads are subject to most of the provisions in this final rule. Small railroads were consulted during the RSAC Working Group deliberations and their interests have been taken into consideration in this final rule. FRA believes that there will be no significant impact on a substantial number of small entities.

C. Paperwork Reduction Act

The information collection requirements in this final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 19995, 44 U.S.C. 3501 *et seq*. The sections that contain the new information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
213.4—Excepted track				
—Designation of track as excepted	200 railroads	20 orders	15 minutes	5 hours.
—Notification to FRA about removal of excepted track	200 railroads	15 notification	10 minutes	3 hours.
213.5—Responsibility of track owners	728 railroads	10 notification	8 hours	80 hours.
213.7—Designation of qualified persons to supervise certain renewals and inspect track				
—Designations	728 railroads	1,500 names	10 minutes	250 hours.
—Employees trained in CWR procedures (New)	31 railroads	80,000 tr. empl.	90 minutes	120,000 hours.
—Written authorizations and recorded exams (New)	31 railroads	80,000 auth. + 80,000 exams.	10 min. + 60 min	93,333 hours.
—Designations (partially qualified) under paragraph (c) of this section.	31 railroads	250 names	10 minutes	42 hours.
213.17—Waivers	728 railroads	6 petitions	24 hours	144 hours.
213.57—Curves, elevation and speed limitations				
—Request to FRA for approval	728 railroads	2 requests	40 hours	80 hours.
—Notification to FRA with written consent of other affected track owners.	728 railroads	2 notifications	45 minutes	2 hours.
—Test plans for higher curving speeds	1 railroad	2 test plans	16 hours	32 hours.
213.110—Gage restraint measurement systems (GRMS)				
—Implementing GRMS—notices & reports	728 railroads	5 notifications + 1 tech rpt.	45 min./4 hours	8 hours.
—GRMS vehicle output reports	728 railroads	50 reports	5 minutes	4 hours.
—GRMS vehicle exception reports	728 railroads	50 reports	5 minutes	4 hours.
—GRMS/PTLF—procedures for data integrity	728 railroads	4 proc. docs.	2 hours	8 hours.
—GRMS training programs/sessions	728 railroads	2 prog. + 5 sessions.	16 hours	112 hours.
—GRMS inspection records	728 railroads	50 records	2 hours	100 hours.
213.118 Continuous welded rail (CWR); plan review and approval				
—Plans w/written procedures for CWR (Amended)	728 railroads	728 plans	4 hours	2,912 hours.
—Notification to FRA and RR employees of CWR plan effective date (New).	728 RRs/80,000 employees.	728 + 80,000 notifications.	15 min.; 2 min.	2,849 hours.
—Written submissions after plan disapproval (New)	728 railroads	20 submissions	2 hours	40 hours.
—Final FRA disapproval and plan amendment (New)	728 railroads	20 am. plans	1 hour	20 hours.
213.119—Continuous welded rail (CWR); plan contents				
—Fracture Report for each broken CWR joint bar	239 RRs/ASLRRA	12,000 reports	10 minutes	2,000 hours.
—Petition for technical conference on Fracture Reports.	1 RR association	1 petition	15 minutes	.25 hour.
—Training programs re CWR procedures. (Amended)	239 RRs/ASLRRA	240 am. tr. programs.	1 hour	240 hours.
—Annual CWR training of employees (New)	31 railroads	80,000 tr. empl.	30 minutes	40,000 hours.
—Record keeping	239 railroads	2,000 records	10 minutes	333 hours.
—Record keeping for CWR rail joints	239 railroads	360,000 rcds.	2 minutes	12,000 hours.
—Periodic records for CWR rail joints	239 railroads	480,000 rcds.	1 minute	8,000 hours.
—Copy of track owner's CWR procedures (New)	728 railroads	239 manuals	10 minutes	40 hours.
213.233—Track inspections—Notations	728 railroads	12,500 notations	1 minute	208 hours.
213.241—Inspection records	728 railroads	1,542,089 rcds.	Varies	1,672,941 hours.
213.303—Responsibility for compliance	2 railroads	1 notification	8 hours	8 hours.

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: FRA Desk Officer. Comments may also be sent via e-mail to the Office of Management and Budget at the following address: *oira_submissions@omb.eop.gov*.

OMB is required to make a decision concerning the collection of information requirements contained in this final rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

FRA cannot impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection

requirements resulting from this rulemaking action prior to the effective date of this final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

D. Environmental Impact

FRA has evaluated this final rule in accordance with its ''Procedures for Considering Environmental Impacts'' (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this action is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. 64 FR 28547, May 26, 1999. In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this final rule that might trigger the need for a more detailed environmental review. As a result, FRA finds that this final rule is not a major Federal action significantly affecting the quality of the human environment.

E. Federalism Implications

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, ''Federalism'' (64 FR 43255, Aug. 10, 1999).

As discussed earlier in the preamble, this final rule creates requirements for the qualification of persons designated to inspect CWR track, or supervise the installation, adjustment, or maintenance of CWR track. This final rule also clarifies the procedures associated with the submission of CWR plans to FRA by track owners and specifies that these plans should add focus on inspecting CWR for pull-apart prone conditions, and on CWR joint installation and maintenance procedures. This final rule also makes other changes to the requirements governing CWR.

Executive Order 13132 requires FRA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications''. ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

FRA has determined that this final rule would not have substantial direct effects on the States, on the relationship between the national government and the States, nor on the distribution of power and responsibilities among the various levels of government. In addition, FRA has determined that this final rule would not impose any direct compliance costs on State and local governments. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

However, this final rule has preemptive effect. Section 20106 provides that States may not adopt or continue in effect any law, regulation, or order related to railroad safety or security that covers the subject matter of a regulation prescribed or issued by the Secretary of Transportation (with respect to railroad safety matters) or the Secretary of Homeland Security (with respect to railroad security matters), except when the State law, regulation, or order qualifies under the local safety or security exception to Section 20106. The intent of Section 20106 is to promote national uniformity in railroad safety and security standards. 49 U.S.C. 20106(a)(1). Thus, subject to a limited exception for essential local safety or security hazards, this final rule establishes a uniform Federal safety standard that must be met, and State requirements covering the same subject matter would be displaced, whether those State requirements are in the form of a State law, including common law, regulation, or order.

In sum, FRA has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 13132. As explained above, FRA has determined that this final rule has no federalism implications, other than the preemption of State laws covering the subject matter of this final rule, which occurs by operation of law under Section 20106 whenever FRA issues a rule or order. Accordingly, FRA has determined that preparation of a federalism summary impact statement for this final rule is not required.

F. Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and Tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law)''. Section 202 of the Act (2 U.S.C. 1532) further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) [currently $141,300,000] in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and Tribal governments and the private sector. This final rule will not result in the expenditure, in the aggregate, of $141,300,000 or more in any one year, and thus preparation of such a statement is not required.

G. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action''. *See* 66 FR 28355 (May 22, 2001). Under the Executive Order a ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this final rule in accordance with Executive Order 13211. FRA has determined that this final rule is not likely to have a significant adverse effect on the supply, distribution, or use of

energy. Consequently, FRA has determined that this final rule is not a ''significant energy action'' within the meaning of the Executive Order.

H. Privacy Act Statement

Anyone is able to search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc). You may review DOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000 (Volume 65, Number 70, Pages 19477–78), or you may visit *http://DocketsInfo.dot.gov*.

List of Subjects in 49 CFR Part 213

Penalties, Railroad safety, Reporting and recordkeeping requirements.

The Rule

■ For the reasons discussed in the preamble, FRA amends part 213 of chapter II, subtitle B of title 49 of the Code of Federal Regulations as follows:

PART 213—[AMENDED]

■ 1. The authority citation for part 213 continues to read as follows:

Authority: 49 U.S.C. 20102–20114 and 20142; 28 U.S.C. 2461, note; and 49 CFR 1.49(m).

■ 2. Section 213.7 is amended by redesignating paragraphs (c) and (d) as paragraphs (d) and (e), respectively; adding new paragraph (c); and revising newly redesignated paragraphs (d) and (e) to read as follows:

§ 213.7 Designation of qualified persons to supervise certain renewals and inspect track.

* * * * *

(c) Individuals designated under paragraphs (a) or (b) of this section that inspect continuous welded rail (CWR) track or supervise the installation, adjustment, and maintenance of CWR track in accordance with the written procedures of the track owner shall have:

(1) Current qualifications under either paragraph (a) or (b) of this section;

(2) Successfully completed a comprehensive training course specifically developed for the application of written CWR procedures issued by the track owner;

(3) Demonstrated to the track owner that the individual:

(i) Knows and understands the requirements of those written CWR procedures;

(ii) Can detect deviations from those requirements; and

(iii) Can prescribe appropriate remedial action to correct or safely compensate for those deviations; and

(4) Written authorization from the track owner to prescribe remedial actions to correct or safely compensate for deviations from the requirements in those procedures and successfully completed a recorded examination on those procedures as part of the qualification process.

(d) Persons not fully qualified to supervise certain renewals and inspect track as required in paragraphs (a) through (c) of this section, but with at least one year of maintenance-of-way or signal experience, may pass trains over broken rails and pull aparts provided that—

(1) The track owner determines the person to be qualified and, as part of doing so, trains, examines, and re-examines the person periodically within two years after each prior examination on the following topics as they relate to the safe passage of trains over broken rails or pull aparts: rail defect identification, crosstie condition, track surface and alinement, gage restraint, rail end mismatch, joint bars, and maximum distance between rail ends over which trains may be allowed to pass. The sole purpose of the examination is to ascertain the person's ability to effectively apply these requirements and the examination may not be used to disqualify the person from other duties. A minimum of four hours training is required for initial training;

(2) The person deems it safe and train speeds are limited to a maximum of 10 m.p.h. over the broken rail or pull apart;

(3) The person shall watch all movements over the broken rail or pull apart and be prepared to stop the train if necessary; and

(4) Person(s) fully qualified under § 213.7 are notified and dispatched to the location promptly for the purpose of authorizing movements and effecting temporary or permanent repairs.

(e) With respect to designations under paragraphs (a) through (d) of this section, each track owner shall maintain written records of—

(1) Each designation in effect;

(2) The basis for each designation; and

(3) Track inspections made by each designated qualified person as required by § 213.241. These records shall be kept available for inspection or copying by the Federal Railroad Administration during regular business hours.

■ 3. Section 213.118 is added to read as follows:

§ 213.118 Continuous welded rail (CWR); plan review and approval.

(a) Each track owner with track constructed of CWR shall have in effect and comply with a plan that contains written procedures which address: the installation, adjustment, maintenance, and inspection of CWR; inspection of CWR joints; and a training program for the application of those procedures.

(b) The track owner shall file its CWR plan with the FRA Associate Administrator for Railroad Safety/Chief Safety Officer (Associate Administrator). Within 30 days of receipt of the submission, FRA will review the plan for compliance with this subpart. FRA will approve, disapprove or conditionally approve the submitted plan, and will provide written notice of its determination.

(c) The track owner's existing plan shall remain in effect until the track owner's new plan is approved or conditionally approved and is effective pursuant to paragraph (d) of this section.

(d) The track owner shall, upon receipt of FRA's approval or conditional approval, establish the plan's effective date. The track owner shall advise in writing FRA and all affected employees of the effective date.

(e) FRA, for cause stated, may, subsequent to plan approval or conditional approval, require revisions to the plan to bring the plan into conformity with this subpart. Notice of a revision requirement shall be made in writing and specify the basis of FRA's requirement. The track owner may, within 30 days of the revision requirement, respond and provide written submissions in support of the original plan. FRA renders a final decision in writing. Not more than 30 days following any final decision requiring revisions to a CWR plan, the track owner shall amend the plan in accordance with FRA's decision and resubmit the conforming plan. The conforming plan becomes effective upon its submission to FRA.

■ 4. Section 213.119 is revised to read as follows:

§ 213.119 Continuous welded rail (CWR); plan contents.

The track owner shall comply with the contents of the CWR plan approved or conditionally approved under § 213.118. The plan shall contain the following elements—

(a) Procedures for the installation and adjustment of CWR which include—

(1) Designation of a desired rail installation temperature range for the geographic area in which the CWR is located; and

(2) De-stressing procedures/methods which address proper attainment of the desired rail installation temperature range when adjusting CWR.

(b) Rail anchoring or fastening requirements that will provide sufficient restraint to limit longitudinal rail and crosstie movement to the extent practical, and specifically addressing CWR rail anchoring or fastening patterns on bridges, bridge approaches, and at other locations where possible longitudinal rail and crosstie movement associated with normally expected train-induced forces, is restricted.

(c) CWR joint installation and maintenance procedures which require that—

(1) Each rail shall be bolted with at least two bolts at each CWR joint;

(2) In the case of a bolted joint installed during CWR installation after August 25, 2009, the track owner shall either, within 60 days—

(i) Weld the joint;

(ii) Install a joint with six bolts; or

(iii) Anchor every tie 195 feet in both directions from the joint; and

(3) In the case of a bolted joint in CWR experiencing service failure or a failed bar with a rail gap present, the track owner shall either—

(i) Weld the joint;

(ii) Replace the broken bar(s), replace the broken bolts, adjust the anchors and, within 30 days, weld the joint;

(iii) Replace the broken bar(s), replace the broken bolts, install one additional bolt per rail end, and adjust anchors;

(iv) Replace the broken bar(s), replace the broken bolts, and anchor every tie 195 feet in both directions from the CWR joint; or

(v) Replace the broken bar(s), replace the broken bolts, add rail with provisions for later adjustment pursuant to paragraph (d)(2) of this section, and reapply the anchors.

(d) Procedures which specifically address maintaining a desired rail installation temperature range when cutting CWR, including rail repairs, in-track welding, and in conjunction with adjustments made in the area of tight track, a track buckle, or a pull-apart. Rail repair practices shall take into consideration existing rail temperature so that—

(1) When rail is removed, the length installed shall be determined by taking into consideration the existing rail temperature and the desired rail installation temperature range; and

(2) Under no circumstances should rail be added when the rail temperature is below that designated by paragraph (a)(1) of this section, without provisions for later adjustment.

(e) Procedures which address the monitoring of CWR in curved track for inward shifts of alinement toward the center of the curve as a result of disturbed track.

(f) Procedures which govern train speed on CWR track when—

(1) Maintenance work, track rehabilitation, track construction, or any other event occurs which disturbs the roadbed or ballast section and reduces the lateral or longitudinal resistance of the track; and

(2) The difference between the average rail temperature and the average rail neutral temperature is in a range that causes buckling-prone conditions to be present at a specific location; and

(3) In formulating the procedures under paragraphs (f)(1) and (f)(2) of this section, the track owner shall—

(i) Determine the speed required, and the duration and subsequent removal of any speed restriction based on the restoration of the ballast, along with sufficient ballast re-consolidation to stabilize the track to a level that can accommodate expected train-induced forces. Ballast re-consolidation can be achieved through either the passage of train tonnage or mechanical stabilization procedures, or both; and

(ii) Take into consideration the type of crossties used.

(g) Procedures which prescribe when physical track inspections are to be performed.

(1) At a minimum, these procedures shall address inspecting track to identify—

(i) Buckling-prone conditions in CWR track, including—

(A) Locations where tight or kinky rail conditions are likely to occur; and

(B) Locations where track work of the nature described in paragraph (f)(1)(i) of this section has recently been performed; and

(ii) Pull-apart prone conditions in CWR track, including locations where pull-apart or stripped-joint rail conditions are likely to occur; and

(2) In formulating the procedures under paragraph (g)(1) of this section, the track owner shall—

(i) Specify when the inspections will be conducted; and

(ii) Specify the appropriate remedial actions to be taken when either buckling-prone or pull-apart prone conditions are found.

(h) Procedures which prescribe the scheduling and conduct of inspections to detect cracks and other indications of potential failures in CWR joints. In formulating the procedures under this paragraph, the track owner shall—

(1) Address the inspection of joints and the track structure at joints, including, at a minimum, periodic on-foot inspections;

(2) Identify joint bars with visible or otherwise detectable cracks and conduct remedial action pursuant to § 213.121;

(3) Specify the conditions of actual or potential joint failure for which personnel must inspect, including, at a minimum, the following items:

(i) Loose, bent, or missing joint bolts;

(ii) Rail end batter or mismatch that contributes to instability of the joint; and

(iii) Evidence of excessive longitudinal rail movement in or near the joint, including, but not limited to; wide rail gap, defective joint bolts, disturbed ballast, surface deviations, gap between tie plates and rail, or displaced rail anchors;

(4) Specify the procedures for the inspection of CWR joints that are imbedded in highway-rail crossings or in other structures that prevent a complete inspection of the joint, including procedures for the removal from the joint of loose material or other temporary material;

(5) Specify the appropriate corrective actions to be taken when personnel find conditions of actual or potential joint failure, including on-foot follow-up inspections to monitor conditions of potential joint failure in any period prior to completion of repairs;

(6) Specify the timing of periodic inspections, which shall be based on the configuration and condition of the joint:

(i) Except as provided in paragraphs (h)(6)(ii) through (h)(6)(iv) of this section, track owners must specify that all CWR joints are inspected, at a minimum, in accordance with the intervals identified in the following table:

MINIMUM NUMBER OF INSPECTIONS PER CALENDAR YEAR [1]

	Freight trains operating over track with an annual tonnage of:			Passenger trains operating over track with an annual tonnage of:	
	Less than 40 mgt	40 to 60 mgt	Greater than 60 mgt	Less than 20 mgt	Greater than or equal to 20 mgt
Class 5 & above	2	3 [2]	4 [2]	3 [2]	3 [2]
Class 4	2	3 [2]	4 [2]	2	3 [2]
Class 3	1	2	2	2	2
Class 2	0	0	0	1	1
Class 1	0	0	0	0	0
Excepted Track	0	0	0	n/a	n/a

4 = Four times per calendar year, with one inspection in each of the following periods: January to March, April to June, July to September, and October to December; and with consecutive inspections separated by at least 60 calendar days.

3 = Three times per calendar year, with one inspection in each of the following periods: January to April, May to August, and September to December; and with consecutive inspections separated by at least 90 calendar days.

2 = Twice per calendar year, with one inspection in each of the following periods: January to June and July to December; and with consecutive inspections separated by at least 120 calendar days.

1 = Once per calendar year, with consecutive inspections separated by at least 180 calendar days.

[1] Where a track owner operates both freight and passenger trains over a given segment of track, and there are two different possible inspection interval requirements, the more frequent inspection interval applies.

[2] When extreme weather conditions prevent a track owner from conducting an inspection of a particular territory within the required interval, the track owner may extend the interval by up to 30 calendar days from the last day that the extreme weather condition prevented the required inspection.

(ii) Consistent with any limitations applied by the track owner, a passenger train conducting an unscheduled detour operation may proceed over track not normally used for passenger operations at a speed not to exceed the maximum authorized speed otherwise allowed, even though CWR joints have not been inspected in accordance with the frequency identified in paragraph (h)(6)(i) of this section, provided that:

(A) All CWR joints have been inspected consistent with requirements for freight service; and

(B) The unscheduled detour operation lasts no more than 14 consecutive calendar days. In order to continue operations beyond the 14-day period, the track owner must inspect the CWR joints in accordance with the requirements of paragraph (h)(6)(i) of this section.

(iii) Tourist, scenic, historic, or excursion operations, if limited to the maximum authorized speed for passenger trains over the next lower class of track, need not be considered in determining the frequency of inspections under paragraph (h)(6)(i) of this section.

(iv) All CWR joints that are located in switches, turnouts, track crossings, lift rail assemblies or other transition devices on moveable bridges must be inspected on foot at least monthly, consistent with the requirements in § 213.235; and all records of those inspections must be kept in accordance with the requirements in § 213.241. A track owner may include in its § 213.235 inspections, in lieu of the joint inspections required by paragraph (h)(6)(i) of this section, CWR joints that are located in track structure that is adjacent to switches and turnouts, provided that the track owner precisely defines the parameters of that arrangement in the CWR plans.

(7) Specify the recordkeeping requirements related to joint bars in CWR, including the following:

(i) The track owner shall keep a record of each periodic and follow-up inspection required to be performed by the track owner's CWR plan, except for those inspections conducted pursuant to § 213.235 for which track owners must maintain records pursuant to § 213.241. The record shall be prepared on the day the inspection is made and signed by the person making the inspection. The record shall include, at a minimum, the following items: the boundaries of the territory inspected; the nature and location of any deviations at the joint from the requirements of this part or of the track owner's CWR plan, with the location identified with sufficient precision that personnel could return to the joint and identify it without ambiguity; the date of the inspection; the remedial action, corrective action, or both, that has been taken or will be taken; and the name or identification number of the person who made the inspection.

(ii) The track owner shall generate a Fracture Report for every cracked or broken CWR joint bar that the track owner discovers during the course of an inspection conducted pursuant to §§ 213.119(g), 213.233, or 213.235 on track that is required under § 213.119(h)(6)(i) to be inspected.

(A) The Fracture Report shall be prepared on the day the cracked or broken joint bar is discovered. The Report shall include, at a minimum: the railroad name; the location of the joint bar as identified by milepost and subdivision; the class of track; annual million gross tons for the previous calendar year; the date of discovery of the crack or break; the rail section; the type of bar (standard, insulated, or compromise); the number of holes in the joint bar; a general description of the location of the crack or break in bar; the visible length of the crack in inches; the gap measurement between rail ends; the amount and length of rail end batter or ramp on each rail end; the amount of tread mismatch; the vertical movement of joint; and in curves or spirals, the amount of gage mismatch and the lateral movement of the joint.

(B) The track owner shall submit the information contained in the Fracture Reports to the FRA Associate Administrator twice annually, by July 31 for the preceding six-month period from January 1 through June 30 and by January 31 for the preceding six-month period from July 1 through December 31.

(C) After February 1, 2010, any track owner may petition FRA to conduct a technical conference to review the Fracture Report data submitted through December of 2009 and assess whether there is a continued need for the collection of Fracture Report data. The track owner shall submit a written

request to the Associate Administrator, requesting the technical conference and explaining the reasons for proposing to discontinue the collection of the data.

(8) In lieu of the requirements for the inspection of rail joints contained in paragraphs (h)(1) through (h)(7) of this section, a track owner may seek approval from FRA to use alternate procedures.

(i) The track owner shall submit the proposed alternate procedures and a supporting statement of justification to the Associate Administrator.

(ii) If the Associate Administrator finds that the proposed alternate procedures provide an equivalent or higher level of safety than the requirements in paragraphs (h)(1) through (h)(7) of this section, the Associate Administrator will approve the alternate procedures by notifying the track owner in writing. The Associate Administrator will specify in the written notification the date on which the procedures will become effective, and after that date, the track owner shall comply with the procedures. If the Associate Administrator determines that the alternate procedures do not provide an equivalent level of safety, the Associate Administrator will disapprove the alternate procedures in writing, and the track owner shall continue to comply with the requirements in paragraphs (h)(1) through (h)(7) of this section.

(iii) While a determination is pending with the Associate Administrator on a request submitted pursuant to paragraph (h)(8) of this section, the track owner shall continue to comply with the requirements contained in paragraphs (h)(1) through (h)(7) of this section.

(i) The track owner shall have in effect a comprehensive training program for the application of these written CWR procedures, with provisions for annual re-training, for those individuals designated under § 213.7(c) as qualified to supervise the installation, adjustment, and maintenance of CWR track and to perform inspections of CWR track. The track owner shall make the training program available for review by FRA upon request.

(j) The track owner shall prescribe and comply with recordkeeping requirements necessary to provide an adequate history of track constructed with CWR. At a minimum, these records must include:

(1) Rail temperature, location, and date of CWR installations. Each record shall be retained for at least one year;

(2) A record of any CWR installation or maintenance work that does not conform to the written procedures. Such record shall include the location of the rail and be maintained until the CWR is brought into conformance with such procedures; and

(3) Information on inspection of rail joints as specified in paragraph (h)(7) of this section.

(k) The track owner shall make readily available, at every job site where personnel are assigned to install, inspect or maintain CWR, a copy of the track owner's CWR procedures and all revisions, appendices, updates, and referenced materials related thereto prior to their effective date. Such CWR procedures shall be issued and maintained in one CWR standards and procedures manual.

(l) As used in this section—

Adjusting/de-stressing means the procedure by which a rail's temperature is re-adjusted to the desired value. It typically consists of cutting the rail and removing rail anchoring devices, which provides for the necessary expansion and contraction, and then re-assembling the track.

Annual re-training means training every calendar year.

Buckling incident means the formation of a lateral misalignment sufficient in magnitude to constitute a deviation from the Class 1 requirements specified in § 213.55. These normally occur when rail temperatures are relatively high and are caused by high longitudinal compressive forces.

Buckling-prone condition means a condition when the actual rail temperature is above the actual rail neutral temperature. This varies given the geographical composition of the track.

Continuous welded rail (CWR) means rail that has been welded together into lengths exceeding 400 feet. Rail installed as CWR remains CWR, regardless of whether a joint or plug is installed into the rail at a later time.

Corrective actions mean those actions which track owners specify in their CWR plans to address conditions of actual or potential joint failure, including, as applicable, repair, restrictions on operations, and additional on-foot inspections.

CWR joint means any joint directly connected to CWR.

Desired rail installation temperature range means the rail temperature range, within a specific geographical area, at which forces in CWR should not cause a buckling incident in extreme heat, or a pull apart during extreme cold weather.

Disturbed track means the disturbance of the roadbed or ballast section, as a result of track maintenance or any other event, which reduces the lateral or longitudinal resistance of the track, or both.

Mechanical stabilization means a type of procedure used to restore track resistance to disturbed track following certain maintenance operations. This procedure may incorporate dynamic track stabilizers or ballast consolidators, which are units of work equipment that are used as a substitute for the stabilization action provided by the passage of tonnage trains.

Pull apart or stripped joint means a condition when no bolts are mounted through a joint on the rail end, rending the joint bar ineffective due to excessive expansive or contractive forces.

Pull-apart prone condition means a condition when the actual rail temperature is below the rail neutral temperature at or near a joint where longitudinal tensile forces may affect the fastenings at the joint.

Rail anchors mean those devices which are attached to the rail and bear against the side of the crosstie to control longitudinal rail movement. Certain types of rail fasteners also act as rail anchors and control longitudinal rail movement by exerting a downward clamping force on the upper surface of the rail base.

Rail neutral temperature is the temperature at which the rail is neither in compression nor tension.

Rail temperature means the temperature of the rail, measured with a rail thermometer.

Remedial actions mean those actions which track owners are required to take as a result of requirements of this part to address a non-compliant condition.

Tight/kinky rail means CWR which exhibits minute alinement irregularities which indicate that the rail is in a considerable amount of compression.

Tourist, scenic, historic, or excursion operations mean railroad operations that carry passengers with the conveyance of the passengers to a particular destination not being the principal purpose.

Track lateral resistance means the resistance provided by the rail/crosstie structure against lateral displacement.

Track longitudinal resistance means the resistance provided by the rail anchors/rail fasteners and the ballast section to the rail/crosstie structure against longitudinal displacement.

Train-induced forces means the vertical, longitudinal, and lateral dynamic forces which are generated during train movement and which can contribute to the buckling potential of the rail.

Unscheduled detour operation means a short-term, unscheduled operation where a track owner has no more than

14 calendar days' notice that the operation is going to occur.

■ 5. Appendix B to part 213 is amended by adding an entry for § 213.118 and revising the entry for § 213.119 to read as follows:

Appendix B to Part 213—Schedule of Civil Penalties

Section		Violation	Willful violation [1]
*	* * * * * * *		*
213.118	Continuous welded rail plan (a) through (e)	5,000	7,500
213.119	Continuous welded rail plan contents (a) through (k)	5,000	7,500
*	* * * * * * *		*

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $100,000 for any violation where circumstances warrant. *See* 49 CFR part 209, appendix A.

* * * * *

Issued in Washington, DC on August 17, 2009.

Joseph C. Szabo,

Administrator, Federal Railroad Administration.

[FR Doc. E9–20253 Filed 8–24–09; 8:45 am]

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Federal Register

Tuesday,
August 25, 2009

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Final Frameworks for Early-Season Migratory Bird Hunting Regulations; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

[FWS-R9-MB-2008-0124; 91200-1231-9BPP-L2]

RIN 1018-AW31

Migratory Bird Hunting; Final Frameworks for Early-Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes final early-season frameworks from which the States, Puerto Rico, and the Virgin Islands may select season dates, limits, and other options for the 2009–10 migratory bird hunting seasons. Early seasons are those that generally open prior to October 1, and include seasons in Alaska, Hawaii, Puerto Rico, and the Virgin Islands. The effect of this final rule is to facilitate the selection of hunting seasons by the States and Territories to further the annual establishment of the early-season migratory bird hunting regulations.

DATES: This rule is effective on August 25, 2009.

ADDRESSES: States and Territories should send their season selections to: Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, ms MBSP-4107-ARLSQ, 1849 C Street, NW., Washington, DC 20240. You may inspect comments during normal business hours at the Service's office in room 4107, 4501 N. Fairfax Drive, Arlington, Virginia, or at *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Robert Blohm, Chief, or Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358-1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 2009

On April 10, 2009, we published in the **Federal Register** (74 FR 16339) a proposal to amend 50 CFR part 20. The proposal provided a background and overview of the migratory bird hunting regulations process, and dealt with the establishment of seasons, limits, and other regulations for hunting migratory game birds under §§20.101 through 20.107, 20.109, and 20.110 of subpart K. Major steps in the 2009–10 regulatory cycle relating to open public meetings and **Federal Register** notifications were also identified in the April 10 proposed rule. Further, we explained that all sections of subsequent documents outlining hunting frameworks and guidelines were organized under numbered headings. Subsequent documents will refer only to numbered items requiring attention. Therefore, it is important to note that we will omit those items requiring no attention, and remaining numbered items will be discontinuous and appear incomplete.

On May 27, 2009, we published in the **Federal Register** (74 FR 25209) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations. The May 27 supplement also provided detailed information on the 2009–10 regulatory schedule and announced the Service Migratory Bird Regulations Committee (SRC) and Flyway Council meetings.

On June 24 and 25, 2009, we held open meetings with the Flyway Council Consultants at which the participants reviewed information on the current status of migratory shore and upland game birds and developed recommendations for the 2009–10 regulations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands, special September waterfowl seasons in designated States, special sea duck seasons in the Atlantic Flyway, and extended falconry seasons. In addition, we reviewed and discussed preliminary information on the status of waterfowl as it relates to the development and selection of the regulatory packages for the 2009–10 regular waterfowl seasons. On July 24, 2009, we published in the **Federal Register** (74 FR 36870) a third document specifically dealing with the proposed frameworks for early-season regulations. We will publish the proposed frameworks for late-season regulations (primarily hunting seasons that start after October 1 and most waterfowl seasons not already established) in a late August **Federal Register**.

This document is the fourth in a series of proposed, supplemental, and final rulemaking documents. It establishes final frameworks from which States may select season dates, shooting hours, and daily bag and possession limits for the 2009–10 season. These selections will be published in the **Federal Register** as amendments to §§20.101 through 20.107, and §20.109 of title 50 CFR part 20.

Review of Public Comments

The preliminary proposed rulemaking, which appeared in the April 10 **Federal Register**, opened the public comment period for migratory game bird hunting regulations. We have considered all pertinent comments received. Comments are summarized below and numbered in the order used in the April 10 **Federal Register**. We have included only the numbered items pertaining to early-season issues for which we received comments. Consequently, the issues do not follow in successive numerical or alphabetical order. We received recommendations from all Flyway Councils. Some recommendations supported continuation of last year's frameworks. Due to the comprehensive nature of the Councils' annual review of the frameworks, we assume Council support for continuation of last year's frameworks for items for which we received no recommendation. Council recommendations for changes are summarized below.

General

Written Comments: An individual commenter protested the entire migratory bird hunting regulations process, the killing of all migratory birds, and the Flyway Council process.

Service Response: Our long-term objectives continue to include providing opportunities to harvest portions of certain migratory game bird populations and to limit harvests to levels compatible with each population's ability to maintain healthy, viable numbers. Having taken into account the zones of temperature and the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory birds, we believe that the hunting seasons provided herein are compatible with the current status of migratory bird populations and long-term population goals. Additionally, we are obligated to, and do, give serious consideration to all information received as public comment. While there are problems inherent with any type of representative management of public-trust resources, we believe that the Flyway-Council system of migratory bird management has been a longstanding example of State-Federal cooperative management since its establishment in 1952. However, as always, we continue to seek new ways to streamline and improve the process.

1. Ducks

Categories used to discuss issues related to duck harvest management are: (A) General Harvest Strategy; (B) Regulatory Alternatives, including specification of framework dates, season lengths, and bag limits; (C) Zones and Split Seasons; and (D) Special Seasons/Species Management. The categories

correspond to previously published issues/discussions, and only those containing substantial recommendations are discussed below.

D. Special Seasons/Species Management

i. September Teal Seasons

Council Recommendations: The Atlantic Flyway Council recommended that the number of hunting days during the special September teal season in the Atlantic Flyway be increased from 9 consecutive days to 16 consecutive days whenever the blue-winged teal breeding population exceeds 4.7 million birds.

Service Response: We concur with the Atlantic Flyway Council's recommendation to increase the number of hunting days during the special September teal season from 9 consecutive hunting days to 16 consecutive hunting days in the Atlantic Flyway whenever the blue-winged teal breeding population estimate for the traditional survey area exceeds 4.7 million birds. The Mississippi and Central Flyways have had operational 16–day September teal seasons (whenever the blue-winged teal breeding population estimate for the traditional survey area exceeds 4.7 million birds) since 1998. In the Atlantic Flyway, existing 9–day September teal seasons were first implemented experimentally in 1998 and made operational in 2003. We estimate that the additional 7 hunting days will result in an increased harvest of about 7,700 blue-winged teal, or about a 10 percent increase in the Flyway's overall blue-winged teal harvest of about 75,000 (average of 75,290 since 1998). In 2007, blue-winged teal harvest in the Mississippi and Central Flyways was about 532,000 in the special September season, and more than 973,000 overall.

In providing the Atlantic Flyway this expanded opportunity for teal, we offer several notes to the Atlantic, Central, and Mississippi Flyway Councils regarding teal. First, although we agree with the analysis prepared and submitted by the Atlantic Flyway Council regarding the expected harvest of the expanded special September teal season in the Atlantic Flyway (minor impacts of less than a 1 percent increase in the overall U.S. blue-winged teal harvest and again only a 10 percent harvest increase for the Flyway), the Atlantic Flyway Council should prepare a report that evaluates pertinent teal population and harvest information after the 16–day season has been conducted for 3 years. The Atlantic Flyway's initial analysis, however, is consistent with our belief and best available science that the expanded season would not have a significant impact on teal populations and thus the Service approves these changes. Second, we note that a new assessment of the cumulative effects of all teal harvest, including harvest during special September seasons, is warranted before any further modifications of special September teal seasons. Therefore, we will not agree to any further modifications of special September teal seasons or other special September duck seasons until a thorough assessment of the harvest potential has been completed for both blue-winged and green-winged teal, as well as an assessment of the impacts of current special September seasons on these two species. We request that the Atlantic, Mississippi, and Central Flyway Councils designate representatives who will assist Service staff with the technical aspects of these assessments. Our goal is to complete this important assessment work within 3 years.

Finally, utilizing the criteria developed for the teal season harvest strategy, this year's estimate of 7.4 million blue-winged teal from the traditional survey area indicates that a 16–day September teal season in the Atlantic, Central, and Mississippi Flyways is appropriate for 2009.

4. Canada Geese

B. Regular Seasons

Council Recommendations: The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that the framework opening date for all species of geese for the regular goose seasons in Michigan and Wisconsin be September 16, 2009.

Written Comments: The Wisconsin Department of Natural Resources expressed appreciation for the Service's approval of a September 16, 2009, framework opening date for all species of geese for the regular goose seasons in Michigan and Wisconsin.

Service Response: We concur. As we stated last year (73 FR 50678), we agree with the objective to increase harvest pressure on resident Canada geese in the Mississippi Flyway and will continue to consider the opening dates in both States as exceptions to the general Flyway opening date, to be reconsidered annually.

9. Sandhill Cranes

Council Recommendations: The Mississippi, Central, and Pacific Flyway Councils recommended expanding the area open to Mid-continent Population (MCP) sandhill crane hunting in Wyoming to include Johnson and Sheridan Counties. The Central and Pacific Flyway Councils recommended using the 2009 Rocky Mountain Population (RMP) sandhill crane harvest allocation of 1,939 birds as proposed in the allocation formula using the 3–year running average.

The Pacific Flyway Council recommended extending the experimental, limited hunt for Lower Colorado River sandhill cranes in Arizona for an additional 3 years. The extension is necessary due to difficulties initiating the new hunt, which was approved by the Service in 2007.

Service Response: We agree with the Councils' recommendations on the RMP sandhill crane harvest allocation of 1,939 birds for the 2009–10 season as outlined in the RMP sandhill crane management plan's harvest allocation formula. Regarding the modification of the MCP sandhill crane hunt area in Wyoming to included portions of Johnson and Sheridan Counties, we agree. Both of these areas are within existing MCP hunt plans.

In 2007, the Pacific Flyway Council recommended, and we approved, the establishment of a limited hunt for the Lower Colorado River Valley Population (LCRVP) of sandhill cranes in Arizona (72 FR 49622). However, the population inventory on which the LCRVP hunt plan is based was not completed that year. Thus, the Arizona Game and Fish Department chose to not conduct the hunt in 2007 and sought approval from the Service again last year to begin conducting the hunt. We again approved the limited hunt (73 FR 50678). However, due to complications encountered with the proposed onset of this new season falling within ongoing efforts to open new hunting seasons on Federal wildlife refuges, the experimental limited hunt season was not opened last year. As such, the State of Arizona has requested that the next 3 years (2009–12) be designated as the new experimental season and has designated an area under State control where the experimental hunt will be conducted. Given that the LCRVP survey results indicate an increase from 1,900 birds in 1998 to 2,401 birds in 2009, and that the 3–year average of 2,981 LCRVP cranes is above the population objective of 2,500, we continue to support the establishment of the 3–year experimental framework for this hunt, conditional on successful monitoring being conducted as called for in the Flyway hunt plan for this population.

Our final environmental assessment (FEA) on this new hunt can be obtained by writing Robert Trost, Pacific Flyway Representative, U.S. Fish and Wildlife Service, Division of Migratory Bird management, 911 NE 11th Avenue, Portland, OR 97232-4181, or it may be viewed online at *http://www.regulations.gov*.

16. Mourning Doves

Council Recommendations: The Atlantic and Mississippi Flyway Councils recommended use of the ''moderate'' season framework for States within the Eastern Management Unit population of mourning doves, resulting in a 70–day season and 15-bird daily bag limit. The daily bag limit could be composed of mourning doves and white-winged doves, singly or in combination.

The Mississippi and Central Flyway Councils recommend the use of the standard (or ''moderate'') season package of a 15-bird daily bag limit and a 70–day season for the 2009-10 mourning dove season in the States within the Central Management Unit. The daily bag limit could be composed of mourning doves and white-winged doves, singly or in combination. The Councils also recommended changing the opening date for dove hunting in the South Zone in Texas to the Friday nearest September 20, but not earlier than September 17.

The Pacific Flyway Council recommended use of the ''moderate'' season framework for States in the Western Management Unit (WMU) population of mourning doves, which represents no change from last year's frameworks.

Written Comments: The Wisconsin Department of Natural Resources supported the Councils' recommendation for a ''moderate'' season package for mourning doves for the 2009–10 season.

Service Response: Last year, we accepted and endorsed the interim harvest strategies for the Central, Eastern, and Western Management Units (73 FR 50678). As we stated then, the interim mourning dove harvest strategies are a step towards implementing the Mourning Dove National Strategic Harvest Plan (Plan) that was approved by all four Flyway Councils in 2003. The Plan represents a new, more informed means of decision-making for dove harvest management besides relying solely on traditional roadside counts of mourning doves as indicators of population trend. However, recognizing that a more comprehensive, national approach would take time to develop, we requested the development of interim harvest strategies, by management unit, until the elements of the Plan can be fully implemented. In 2004, each management unit submitted its respective strategy, but the strategies used different datasets and different approaches or methods. After initial submittal and review in 2006, we requested that the strategies be revised, using similar, existing datasets among the management units along with similar decision-making criteria. In January 2008, we recommended that, following approval by the respective Flyway Councils in March, the strategies be submitted in 2008 for endorsement by the Service, with implementation for the 2009–10 hunting season. Thus, based on the new interim harvest strategies and current population status, we agree with the recommended selection of the ''moderate'' season frameworks for doves in the Eastern, Central, and Western Management Units.

Regarding the recommended change in the opening date for dove hunting in the South Zone in Texas, we agree. Allowing Texas to use a ''floating'' framework opening date for the South Zone is a relatively minor change that would allow Texas additional flexibility in establishing its season.

17. White-winged and White-tipped Doves

Council Recommendations: The Mississippi and Central Flyway Councils recommend modifying the boundary for the Special White-winged Dove Area (SWWDA) in Texas by removing portions of Jim Hogg and northern Starr Counties, and modifying the daily bag limit in the SWWDA in Texas to 15 doves per day in the aggregate to be consistent with mourning dove frameworks.

Service Response: We agree with the Councils' recommendation to remove portions of the SWWDA area in Texas. Removal of the areas with poorer quality white-winged dove habitat from the SWWDA hunt area will allow Texas to more appropriately manage the overall dove harvest. We also agree with the Councils' recommendation to modify the daily bag limit in the SWWDA from 12 to 15 birds per day. Increasing the overall aggregate daily bag limit on doves, while maintaining the existing internal bag limit restrictions on mourning and white-tipped doves, will provide hunters more consistent and easily understood dove hunting regulations.

18. Alaska

Council Recommendations: The Pacific Flyway Council recommended reducing the daily bag limits for brant in Alaska from 3 per day with 6 in possession to 2 per day with 4 in possession. The Council also subsequently recommended at the June SRC meeting several goose season modifications to address new survey information regarding estimates of dusky Canada geese. They recommended delaying the opening of goose hunting in the affected areas by one week, implementing an education and outreach program to notify hunters of the need for further harvest restrictions, initiation of a voluntary check station for dusky Canada geese in those areas, and implementation of actions identified in the Pacific Flyway Management Plan for dusky Canada geese in 2010.

Service Response: This year, the annual population index of dusky Canada geese, based on the breeding pair survey on the Copper River Delta, is 6,709, a decrease from the previous year's index of 9,152. The 3–year average index is 8,682. This decline triggers implementation of further measures of protection for this population as described under Action level 2 in the management plan. These results further increase our longstanding concern for this subspecies of Canada goose. We appreciate the fact that the Pacific Flyway had planned for this possible situation when the Flyway management plan for this population was revised in 2008, and we strongly support the development and use of these cooperatively developed management plans. Therefore, we will enact the harvest management program called for in the Flyway management plan at this population level. More specifically:

(1) A mandatory State-issued permit is required to hunt Canada geese in Alaska GMU 6-C, and on Middleton, Hinchinbrook and Hawkins Islands in the Gulf of Alaska adjacent to GMU 6-C;

(2) All geese harvested from these areas must be taken to a State-operated check station where the subspecies will be determined;

(3) The season for all Canada geese will be closed if a total of 40 dusky Canada geese are harvested; and

(4) The State of Alaska will conduct an effort to educate the hunting public about the conservation concerns surrounding the dusky Canada goose in the area of Cordova, Alaska.

We recognize the fact that implementation of the permit hunt in a

relatively short time will prove challenging, but we strongly believe that the actions outlined in the management plan constitute the best course of action for harvest management of the dusky Canada goose.

We recognize the work involved in crafting the amended recommendation from the Pacific Flyway Council on behalf of the State of Alaska. However, this recommendation consists of harvest management actions not addressed in the Flyway management plan, and their impact on dusky Canada goose harvest is unknown. Further, the Council's amended proposal does not establish a limit on the number of dusky Canada geese that could be taken, nor would they provide any information regarding the harvest of dusky Canada geese in the Copper River Delta area.

We concur with the Pacific Flyway Council's recommendation to decrease the daily bag and possession limit for brant.

20. Puerto Rico

Council Recommendations: The Atlantic Flyway Council recommended that Puerto Rico be permitted to adopt a 20-bird bag limit for doves in the aggregate for the next three hunting seasons, 2009–2011. Legally hunted dove species in Puerto Rico are the Zenaida dove, the white-winged dove, and the mourning dove. They also recommended that the 20-bird aggregate bag limit should include no more than 10 Zenaida doves and no more than 3 mourning doves.

Service Response: As we stated last year when we approved Puerto Rico's proposal (73 FR 50678), we concur with the intent of the 3–year experimental season to increase harvest pressure on a rapidly growing population of white-winged doves while decreasing hunting pressure on Zenaida and mourning doves.

NEPA Consideration

NEPA considerations are covered by the programmatic document ''Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88-14),'' filed with the Environmental Protection Agency on June 9, 1988. We published a notice of availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our record of decision on August 18, 1988 (53 FR 31341). In addition, an August 1985 environmental assessment entitled ''Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands'' is available by writing to the address indicated under the caption **ADDRESSES**.

In a notice published in the September 8, 2005, **Federal Register** (70 FR 53376), we announced our intent to develop a new Supplemental Environmental Impact Statement for the migratory bird hunting program. Public scoping meetings were held in the spring of 2006, as detailed in a March 9, 2006, **Federal Register** (71 FR 12216). We have prepared a scoping report summarizing the scoping comments and scoping meetings. The report is available by either writing to the address indicated under **ADDRESSES** or by viewing on our website at *http://www.fws.gov/migratorybirds/*.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531–1543; 87 Stat. 884), provides that, ''The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act'' (and) shall ''insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat. * * *.'' Consequently, we conducted formal consultations to ensure that actions resulting from these regulations would not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion, which concluded that the regulations are not likely to jeopardize the continued existence of any endangered or threatened species. Additionally, these findings may have caused modification of some regulatory measures previously proposed, and the final frameworks reflect any such modifications. Our biological opinions resulting from this section 7 consultation are public documents available for public inspection at the address indicated under **ADDRESSES**.

Executive Order 12866

The Office of Management and Budget has determined that this rule is significant and has reviewed this rule under Executive Order 12866. OMB bases its determination of regulatory significance upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

An Economic Analysis was prepared for the 2008-2009 season. This analysis was based on data from the 2006 National Hunting and Fishing Survey, the most recent year for which data are available (see discussion in Regulatory Flexibility Act section below). This analysis estimates consumer surplus for three alternatives for duck hunting (estimates for other species are not quantified due to lack of data). The alternatives are 1) Issue restrictive regulations allowing fewer days than those issued during the 2007-2008 season, 2) Issues moderate regulations allowing more days than those in alternative 1, and 3) Issue liberal regulations identical to the regulations in the 2007-2008 season. For the 2008-2009 season, we chose alternative 3, with an estimated consumer surplus across all flyways of $205-$270 million. For the upcoming 2009-2010 season, we again considered these three alternatives and again chose alternative 3 for ducks. We made minor modifications to the season frameworks for some other species, but these do not significantly change the economic impacts of the rule, which were not quantified for other species. For these reasons, we have not conducted a new Economic Analysis, but the 2008-2009 analysis is part of the record for this rule and is available at *http://www.fws.gov/migratorybirds/NewReportsPublications/SpecialTopics/SpecialTopics.html#HuntingRegs* or at *http://www.regulations.gov.*

Regulatory Flexibility Act

The regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis. This analysis was revised annually from 1990–95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, 2004, and 2008. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey,

which is conducted at 5–year intervals. The 2008 Analysis was based on the 2006 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend approximately $1.2 billion at small businesses in 2008. Copies of the Analysis are available upon request from the address indicated under **ADDRESSES** or from our website at *http://www.fws.gov/migratorybirds/NewReportsPublications/SpecialTopics/SpecialTopics.html#HuntingRegs* or at *http://www.regulations.gov*.

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more.

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, subpart K, are utilized in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of our Migratory Bird Surveys and assigned control number 1018–0023 (expires 2/28/2011). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Alaska Subsistence Household Survey, an associated voluntary annual household survey used to determine levels of subsistence take in Alaska, and assigned control number 1018–0124 (expires 1/31/2010). A Federal agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this rule, has determined that this rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

Energy Effects—Executive Order 13211

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Government-to-Government Relationship with Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally-recognized Indian tribes and have determined that there are no effects on Indian trust resources. However, in the April 10 **Federal Register**, we solicited proposals for special migratory bird hunting regulations for certain Tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for the 2009–10 migratory bird hunting season. The resulting proposals were contained in a separate proposed rule (74 FR 36870). By virtue of these actions, we have consulted with Tribes affected by this rule.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and Tribes to determine which seasons meet their individual needs. Any State or Indian Tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, we intend that the public be given the greatest possible opportunity to comment. Thus, when the preliminary proposed rulemaking was published, we established what we believed were the longest periods possible for public comment. In doing this, we recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, States would have insufficient time to select season dates and limits; to communicate those selections to us; and to establish and publicize the necessary regulations and procedures to implement their decisions. We therefore find that ''good cause'' exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these frameworks will, therefore, take effect immediately upon publication. Therefore, under authority of the Migratory Bird Treaty Act (July 3, 1918), as amended (16 U.S.C. 703–711), we prescribe final frameworks setting forth the species to be hunted, the daily bag and possession limits, the shooting hours, the season lengths, the earliest opening and latest closing season dates, and hunting areas, from which State conservation agency officials will select

hunting season dates and other options. Upon receipt of season selections from these officials, we will publish a final rulemaking amending 50 CFR part 20 to reflect seasons, limits, and shooting hours for the conterminous United States for the 2009–10 season.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 2009–10 hunting season are authorized under 16 U.S.C. 703-712 and 16 U.S.C. 742 a-j.

Dated: August 5, 2009

Jane Lyder

Deputy Assistant Secretary for Fish and Wildlife and Parks.

Final Regulations Frameworks for 2009–10 Early Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Department of the Interior approved the following frameworks, which prescribe season lengths, bag limits, shooting hours, and outside dates within which States may select hunting seasons for certain migratory game birds between September 1, 2009, and March 10, 2010.

General

Dates: All outside dates noted below are inclusive.

Shooting and Hawking (taking by falconry) Hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily.

Possession Limits: Unless otherwise specified, possession limits are twice the daily bag limit.

Flyways and Management Units

Waterfowl Flyways

Atlantic Flyway — includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Mississippi Flyway — includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Central Flyway — includes Colorado (east of the Continental Divide), Kansas, Montana (Counties of Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Pacific Flyway — includes Alaska, Arizona, California, Idaho, Nevada, Oregon, Utah, Washington, and those portions of Colorado, Montana, New Mexico, and Wyoming not included in the Central Flyway.

Management Units

Mourning Dove Management Units:

Eastern Management Unit — All States east of the Mississippi River, and Louisiana.

Central Management Unit — Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming.

Western Management Unit — Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington.

Woodcock Management Regions:

Eastern Management Region — Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Central Management Region — Alabama, Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, and Wisconsin.

Other geographic descriptions are contained in a later portion of this document.

Definitions

Dark geese: Canada geese, white-fronted geese, brant (except in Alaska, California, Oregon, Washington, and the Atlantic Flyway), and all other goose species, except light geese.

Light geese: snow (including blue) geese and Ross's geese.

Waterfowl Seasons in the Atlantic Flyway

In the Atlantic Flyway States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Pennsylvania, and Virginia, where Sunday hunting is prohibited Statewide by State law, all Sundays are closed to all take of migratory waterfowl (including mergansers and coots).

Special September Teal Season

Outside Dates: Between September 1 and September 30, an open season on all species of teal may be selected by the following States in areas delineated by State regulations:

Atlantic Flyway — Delaware, Florida, Georgia, Maryland, North Carolina, South Carolina, and Virginia.

Mississippi Flyway — Alabama, Arkansas, Illinois, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Ohio, and Tennessee.

Central Flyway — Colorado (part), Kansas, Nebraska (part), New Mexico (part), Oklahoma, and Texas.

Hunting Seasons and Daily Bag Limits: Not to exceed 16 consecutive hunting days in the Atlantic, Mississippi and Central Flyways. The daily bag limit is 4 teal.

Shooting Hours:

Atlantic Flyway — One-half hour before sunrise to sunset, except in Maryland, where the hours are from sunrise to sunset.

Mississippi and Central Flyways — One-half hour before sunrise to sunset, except in the States of Arkansas, Illinois, Indiana, Missouri, and Ohio, where the hours are from sunrise to sunset.

Special September Duck Seasons

Florida, Kentucky and Tennessee: In lieu of a special September teal season, a 5-consecutive-day season may be selected in September. The daily bag limit may not exceed 4 teal and wood ducks in the aggregate, of which no more than 2 may be wood ducks.

Iowa: Iowa may hold up to 5 days of its regular duck hunting season in September. All ducks that are legal during the regular duck season may be taken during the September segment of the season. The September season segment may commence no earlier than the Saturday nearest September 20 (September 19). The daily bag and possession limits will be the same as those in effect last year but are subject to change during the late-season regulations process. The remainder of the regular duck season may not begin before October 10.

Special Youth Waterfowl Hunting Days

Outside Dates: States may select 2 consecutive days (hunting days in Atlantic Flyway States with compensatory days) per duck-hunting zone, designated as ''Youth Waterfowl Hunting Days,'' in addition to their regular duck seasons. The days must be held outside any regular duck season on a weekend, holidays, or other non-school days when youth hunters would have the maximum opportunity to participate. The days may be held up to 14 days before or after any regular duck-season frameworks or within any split

of a regular duck season, or within any other open season on migratory birds.

Daily Bag Limits: The daily bag limits may include ducks, geese, mergansers, coots, moorhens, and gallinules and would be the same as those allowed in the regular season. Flyway species and area restrictions would remain in effect.

Shooting Hours: One-half hour before sunrise to sunset.

Participation Restrictions: Youth hunters must be 15 years of age or younger. In addition, an adult at least 18 years of age must accompany the youth hunter into the field. This adult may not duck hunt but may participate in other seasons that are open on the special youth day.

Scoter, Eider, and Long-tailed Ducks (Atlantic Flyway)

Outside Dates: Between September 15 and January 31.

Hunting Seasons and Daily Bag Limits: Not to exceed 107 days, with a daily bag limit of 7, singly or in the aggregate, of the listed sea-duck species, of which no more than 4 may be scoters.

Daily Bag Limits During the Regular Duck Season: Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may choose to allow the above sea duck limits in addition to the limits applying to other ducks during the regular duck season. In all other areas, sea ducks may be taken only during the regular open season for ducks and are part of the regular duck season daily bag (not to exceed 4 scoters) and possession limits.

Areas: In all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, and New York; in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 1 mile of open water from any shore, island, and emergent vegetation in New Jersey, South Carolina, and Georgia; and in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island, and emergent vegetation in Delaware, Maryland, North Carolina, and Virginia; and provided that any such areas have been described, delineated, and designated as special sea-duck hunting areas under the hunting regulations adopted by the respective States.

Special Early Canada Goose Seasons

Atlantic Flyway

General Seasons

Canada goose seasons of up to 15 days during September 1–15 may be selected for the Eastern Unit of Maryland and Delaware. Seasons not to exceed 25 days during September 1–25 may be selected for the Montezuma Region of New York and the Lake Champlain Region of New York and Vermont. Seasons not to exceed 30 days during September 1–30 may be selected for Connecticut, Florida, Georgia, New Jersey, New York (Long Island Zone), North Carolina, Rhode Island, and South Carolina. Seasons may not exceed 25 days during September 1–25 in the remainder of the Flyway. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Daily Bag Limits: Not to exceed 15 Canada geese.

Experimental Seasons

Canada goose seasons of up to 10 days during September 16–25 may be selected in Delaware. The daily bag limit may not exceed 15 Canada geese. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Shooting Hours: One-half hour before sunrise to sunset, except that during any general season, shooting hours may extend to one-half hour after sunset if all other waterfowl seasons are closed in the specific applicable area.

Mississippi Flyway

General Seasons

Canada goose seasons of up to 15 days during September 1–15 may be selected, except in the Upper Peninsula in Michigan, where the season may not extend beyond September 10, and in Minnesota (except in the Northwest Goose Zone), where a season of up to 22 days during September 1–22 may be selected. The daily bag limit may not exceed 5 Canada geese. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

A Canada goose season of up to 10 consecutive days during September 1–10 may be selected by Michigan for Huron, Saginaw, and Tuscola Counties, except that the Shiawassee National Wildlife Refuge, Shiawassee River State Game Area Refuge, and the Fish Point Wildlife Area Refuge will remain closed. The daily bag limit may not exceed 5 Canada geese.

Experimental Seasons

Canada goose seasons of up to 7 days during September 16–22 may be selected in the Northwest Goose Zone in Minnesota. The daily bag limit may not exceed 5 Canada geese. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Shooting Hours: One-half hour before sunrise to sunset, except that during September 1–15 shooting hours may extend to one-half hour after sunset if all other waterfowl seasons are closed in the specific applicable area.

Central Flyway

General Seasons

In Kansas, Nebraska, Oklahoma, South Dakota, and Texas, Canada goose seasons of up to 30 days during September 1–30 may be selected. In Colorado, New Mexico, North Dakota, Montana, and Wyoming, Canada goose seasons of up to 15 days during September 1–15 may be selected. The daily bag limit may not exceed 5 Canada geese. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Shooting Hours: One-half hour before sunrise to sunset, except that during September 1–15 shooting hours may extend to one-half hour after sunset if all other waterfowl seasons are closed in the specific applicable area.

Pacific Flyway

General Seasons

California may select a 9–day season in Humboldt County during the period September 1–15. The daily bag limit is 2.

Colorado may select a 9–day season during the period of September 1–15. The daily bag limit is 3.

Oregon may select a special Canada goose season of up to 15 days during the period September 1–15. In addition, in the NW Goose Management Zone in Oregon, a 15–day season may be selected during the period September 1–20. Daily bag limits may not exceed 5 Canada geese.

Idaho may select a 7–day season during the period September 1–15. The daily bag limit is 2 and the possession limit is 4.

Washington may select a special Canada goose season of up to 15 days during the period September 1–15. Daily bag limits may not exceed 5 Canada geese.

Wyoming may select an 8–day season on Canada geese between September 1–15. This season is subject to the following conditions:

1. Where applicable, the season must be concurrent with the September portion of the sandhill crane season.

2. A daily bag limit of 2, with season and possession limits of 4, will apply to the special season.

Areas open to hunting of Canada geese in each State must be described, delineated, and designated as such in each State's hunting regulations.

Regular Goose Seasons

Regular goose seasons may open as early as September 16 in Wisconsin and Michigan. Season lengths, bag and possession limits, and other provisions will be established during the late-season regulations process.

Sandhill Cranes

Regular Seasons in the Central Flyway

Outside Dates: Between September 1 and February 28.

Hunting Seasons: Seasons not to exceed 37 consecutive days may be selected in designated portions of North Dakota (Area 2) and Texas (Area 2). Seasons not to exceed 58 consecutive days may be selected in designated portions of the following States: Colorado, Kansas, Montana, North Dakota, South Dakota, and Wyoming. Seasons not to exceed 93 consecutive days may be selected in designated portions of the following States: New Mexico, Oklahoma, and Texas.

Daily Bag Limits: 3 sandhill cranes, except 2 sandhill cranes in designated portions of North Dakota (Area 2) and Texas (Area 2).

Permits: Each person participating in the regular sandhill crane season must have a valid Federal or State sandhill crane hunting permit.

Special Seasons in the Central and Pacific Flyways

Arizona, Colorado, Idaho, Montana, New Mexico, Utah, and Wyoming may select seasons for hunting sandhill cranes within the range of the Rocky Mountain Population (RMP) subject to the following conditions:

Outside Dates: Between September 1 and January 31.

Hunting Seasons: The season in any State or zone may not exceed 30 days.

Bag limits: Not to exceed 3 daily and 9 per season.

Permits: Participants must have a valid permit, issued by the appropriate State, in their possession while hunting.

Other provisions: Numbers of permits, open areas, season dates, protection plans for other species, and other provisions of seasons must be consistent with the management plan and approved by the Central and Pacific Flyway Councils, with the following exceptions:

1. In Utah, 100 percent of the harvest will be assigned to the RMP quota;

2. In Arizona, monitoring the racial composition of the harvest must be conducted at 3–year intervals;

3. In Idaho, 100 percent of the harvest will be assigned to the RMP quota; and

4. In New Mexico, the season in the Estancia Valley is experimental, with a requirement to monitor the level and racial composition of the harvest; greater sandhill cranes in the harvest will be assigned to the RMP quota.

Special Seasons in the Pacific Flyway

Arizona may select a season for hunting sandhill cranes within the range of the Lower Colorado River Population (LCR) of sandhill cranes, subject to the following conditions:

Outside Dates: Between January 1 and January 31.

Hunting Seasons: The season may not exceed 3 days.

Bag limits: Not to exceed 1 daily and 1 per season.

Permits: Participants must have a valid permit, issued by the appropriate State, in their possession while hunting.

Other provisions: The season is experimental. Numbers of permits, open areas, season dates, protection plans for other species, and other provisions of seasons must be consistent with the management plan and approved by the Pacific Flyway Council.

Common Moorhens and Purple Gallinules

Outside Dates: Between September 1 and the last Sunday in January (January 31) in the Atlantic, Mississippi and Central Flyways. States in the Pacific Flyway have been allowed to select their hunting seasons between the outside dates for the season on ducks; therefore, they are late-season frameworks, and no frameworks are provided in this document.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 70 days in the Atlantic, Mississippi, and Central Flyways. Seasons may be split into 2 segments. The daily bag limit is 15 common moorhens and purple gallinules, singly or in the aggregate of the two species.

Zoning: Seasons may be selected by zones established for duck hunting.

Rails

Outside Dates: States included herein may select seasons between September 1 and the last Sunday in January (January 31) on clapper, king, sora, and Virginia rails.

Hunting Seasons: Seasons may not exceed 70 days, and may be split into 2 segments.

Daily Bag Limits:

Clapper and King Rails — In Rhode Island, Connecticut, New Jersey, Delaware, and Maryland, 10, singly or in the aggregate of the 2 species. In Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, and Virginia, 15, singly or in the aggregate of the two species.

Sora and Virginia Rails — In the Atlantic, Mississippi, and Central Flyways and the Pacific-Flyway portions of Colorado, Montana, New Mexico, and Wyoming, 25 daily and 25 in possession, singly or in the aggregate of the two species. The season is closed in the remainder of the Pacific Flyway.

Common Snipe

Outside Dates: Between September 1 and February 28, except in Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, and Virginia, where the season must end no later than January 31.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 107 days and may be split into two segments. The daily bag limit is 8 snipe.

Zoning: Seasons may be selected by zones established for duck hunting.

American Woodcock

Outside Dates: States in the Eastern Management Region may select hunting seasons between October 1 and January 31. States in the Central Management Region may select hunting seasons between the Saturday nearest September 22 (September 19) and January 31.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 30 days in the Eastern Region and 45 days in the Central Region. The daily bag limit is 3. Seasons may be split into two segments.

Zoning: New Jersey may select seasons in each of two zones. The season in each zone may not exceed 24 days.

Band-tailed Pigeons

Pacific Coast States (California, Oregon, Washington, and Nevada)

Outside Dates: Between September 15 and January 1.

Hunting Seasons and Daily Bag Limits: Not more than 9 consecutive days, with a daily bag limit of 2 band-tailed pigeons.

Zoning: California may select hunting seasons not to exceed 9 consecutive days in each of two zones. The season in the North Zone must close by October 3.

Four-Corners States (Arizona, Colorado, New Mexico, and Utah)

Outside Dates: Between September 1 and November 30.

Hunting Seasons and Daily Bag Limits: Not more than 30 consecutive

days, with a daily bag limit of 5 band-tailed pigeons.

Zoning: New Mexico may select hunting seasons not to exceed 20 consecutive days in each of two zones. The season in the South Zone may not open until October 1.

Mourning Doves

Outside Dates: Between September 1 and January 15, except as otherwise provided, States may select hunting seasons and daily bag limits as follows:

Eastern Management Unit

Hunting Seasons and Daily Bag Limits: Not more than 70 days, with a daily bag limit of 15 mourning and white-winged doves in the aggregate.

Zoning and Split Seasons: States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods. Regulations for bag and possession limits, season length, and shooting hours must be uniform within specific hunting zones.

Central Management Unit

Hunting Seasons and Daily Bag Limits: Not more than 70 days, with a daily bag limit of 15 mourning and white-winged doves in the aggregate.

Zoning and Split Seasons

States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods.

Texas may select hunting seasons for each of three zones subject to the following conditions:

A. The hunting season may be split into not more than two periods, except in that portion of Texas in which the special white-winged dove season is allowed, where a limited mourning dove season may be held concurrently with that special season (see white-winged dove frameworks).

B. A season may be selected for the North and Central Zones between September 1 and January 25; and for the South Zone between the Friday nearest September 20 (September 18), but not earlier than September 17, and January 25.

C. Daily bag limits are aggregate bag limits with mourning, white-winged, and white-tipped doves (see white-winged dove frameworks for specific daily bag limit restrictions).

D. Except as noted above, regulations for bag and possession limits, season length, and shooting hours must be uniform within each hunting zone.

Western Management Unit

Hunting Seasons and Daily Bag Limits

Idaho, Oregon, and Washington — Not more than 30 consecutive days, with a daily bag limit of 10 mourning doves.

Utah — Not more than 30 consecutive days, with a daily bag limit that may not exceed 10 mourning doves and white-winged doves in the aggregate.

Nevada — Not more than 30 consecutive days, with a daily bag limit of 10 mourning doves, except in Clark and Nye Counties, where the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

Arizona and California — Not more than 60 days, which may be split between two periods, September 1–15 and November 1–January 15. In Arizona, during the first segment of the season, the daily bag limit is 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves. During the remainder of the season, the daily bag limit is 10 mourning doves. In California, the daily bag limit is 10 mourning doves, except in Imperial, Riverside, and San Bernardino Counties, where the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

White-winged and White-tipped Doves

Hunting Seasons and Daily Bag Limits:

Except as shown below, seasons must be concurrent with mourning dove seasons.

Eastern Management Unit: The daily bag limit may not exceed 15 mourning and white-winged doves in the aggregate.

Central Management Unit

In Texas, the daily bag limit may not exceed 15 mourning, white-winged, and white-tipped doves in the aggregate, of which no more than 2 may be white-tipped doves. In addition, Texas also may select a hunting season of not more than 4 days for the special white-winged dove area of the South Zone between September 1 and September 19. The daily bag limit may not exceed 15 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 4 may be mourning doves and 2 may be white-tipped doves.

In the remainder of the Central Management Unit, the daily bag limit may not exceed 15 mourning and white-winged doves in the aggregate.

Western Management Unit

Arizona may select a hunting season of not more than 30 consecutive days, running concurrently with the first segment of the mourning dove season. The daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves.

In Utah, the Nevada Counties of Clark and Nye, and in the California Counties of Imperial, Riverside, and San Bernardino, the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

In the remainder of the Western Management Unit, the season is closed.

Alaska

Outside Dates: Between September 1 and January 26.

Hunting Seasons: Alaska may select 107 consecutive days for waterfowl, sandhill cranes, and common snipe in each of 5 zones. The season may be split without penalty in the Kodiak Zone. The seasons in each zone must be concurrent.

Closures: The hunting season is closed on emperor geese, spectacled eiders, and Steller's eiders.

Daily Bag and Possession Limits

Ducks — Except as noted, a basic daily bag limit of 7 and a possession limit of 21 ducks. Daily bag and possession limits in the North Zone are 10 and 30, and in the Gulf Coast Zone, they are 8 and 24. The basic limits may include no more than 1 canvasback daily and 3 in possession and may not include sea ducks.

In addition to the basic duck limits, Alaska may select sea duck limits of 10 daily, 20 in possession, singly or in the aggregate, including no more than 6 each of either harlequin or long-tailed ducks. Sea ducks include scoters, common and king eiders, harlequin ducks, long-tailed ducks, and common and red-breasted mergansers.

Light Geese — A basic daily bag limit of 4 and a possession limit of 8.

Dark Geese — A basic daily bag limit of 4 and a possession limit of 8.

Dark-goose seasons are subject to the following exceptions:

1. In Units 5 and 6, the taking of Canada geese is permitted from September 28 through December 16.

2. On Middleton Island in Unit 6, a special, permit-only Canada goose season may be offered. A mandatory goose identification class is required. Hunters must check in and check out. The bag limit is 1 daily and 1 in possession. The season will close if incidental harvest includes 5 dusky Canada geese. A dusky Canada goose is any dark-breasted Canada goose (Munsell 10 YR color value five or less) with a bill length between 40 and 50 millimeters.

3. In Units 6-B, 6-C and on Hinchinbrook and Hawkins Islands in Unit 6-D, a special, permit-only Canada goose season may be offered. Hunters must have all harvested geese checked and classified to subspecies. The daily bag limit is 4 daily and 8 in possession. The Canada goose season will close in all of the permit areas if the total dusky goose (as defined above) harvest reaches 40.

4. In Units 9, 10, 17, and 18, dark goose limits are 6 per day, 12 in possession; however, no more than 2 may be Canada geese in Units 9(E) and 18; and no more than 4 may be Canada geese in Units 9(A-C), 10 (Unimak Island portion), and 17.

Brant — A daily bag limit of 2 and a possession limit of 4.

Common snipe — A daily bag limit of 8.

Sandhill cranes — Bag and possession limits of 2 and 4, respectively, in the Southeast, Gulf Coast, Kodiak, and Aleutian Zones, and Unit 17 in the Northern Zone. In the remainder of the Northern Zone (outside Unit 17), bag and possession limits of 3 and 6, respectively.

Tundra Swans — Open seasons for tundra swans may be selected subject to the following conditions:

1. All seasons are by registration permit only.

2. All season framework dates are September 1 – October 31.

3. In Game Management Unit (GMU) 17, no more than 200 permits may be issued during this operational season. No more than 3 tundra swans may be authorized per permit, with no more than 1 permit issued per hunter per season.

4. In Game Management Unit (GMU) 18, no more than 500 permits may be issued during the operational season. Up to 3 tundra swans may be authorized per permit. No more than 1 permit may be issued per hunter per season.

5. In GMU 22, no more than 300 permits may be issued during the operational season. Each permittee may be authorized to take up to 3 tundra swans per permit. No more than 1 permit may be issued per hunter per season.

6. In GMU 23, no more than 300 permits may be issued during the operational season. No more than 3 tundra swans may be authorized per permit, with no more than 1 permit issued per hunter per season.

Hawaii

Outside Dates: Between October 1 and January 31.

Hunting Seasons: Not more than 65 days (75 under the alternative) for mourning doves.

Bag Limits: Not to exceed 15 (12 under the alternative) mourning doves.

Note: Mourning doves may be taken in Hawaii in accordance with shooting hours and other regulations set by the State of Hawaii, and subject to the applicable provisions of 50 CFR part 20.

Puerto Rico

Doves and Pigeons

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days.

Daily Bag and Possession Limits: Not to exceed 20 Zenaida, mourning, and white-winged doves in the aggregate, of which not more than 10 may be Zenaida doves and 3 may be mourning doves. Not to exceed 5 scaly-naped pigeons.

Closed Seasons: The season is closed on the white-crowned pigeon and the plain pigeon, which are protected by the Commonwealth of Puerto Rico.

Closed Areas: There is no open season on doves or pigeons in the following areas: Municipality of Culebra, Desecheo Island, Mona Island, El Verde Closure Area, and Cidra Municipality and adjacent areas.

Ducks, Coots, Moorhens, Gallinules, and Snipe

Outside Dates: Between October 1 and January 31.

Hunting Seasons: Not more than 55 days may be selected for hunting ducks, common moorhens, and common snipe. The season may be split into two segments.

Daily Bag Limits:

Ducks — Not to exceed 6.

Common moorhens — Not to exceed 6.

Common snipe — Not to exceed 8.

Closed Seasons: The season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, and masked duck, which are protected by the Commonwealth of Puerto Rico. The season also is closed on the purple gallinule, American coot, and Caribbean coot.

Closed Areas: There is no open season on ducks, common moorhens, and common snipe in the Municipality of Culebra and on Desecheo Island.

Virgin Islands

Doves and Pigeons

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days for Zenaida doves.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida doves.

Closed Seasons: No open season is prescribed for ground or quail doves, or pigeons in the Virgin Islands.

Closed Areas: There is no open season for migratory game birds on Ruth Cay (just south of St. Croix).

Local Names for Certain Birds: Zenaida dove, also known as mountain dove; bridled quail-dove, also known as Barbary dove or partridge; Common ground-dove, also known as stone dove, tobacco dove, rola, or tortolita; scaly-naped pigeon, also known as red-necked or scaled pigeon.

Ducks

Outside Dates: Between December 1 and January 31.

Hunting Seasons: Not more than 55 consecutive days.

Daily Bag Limits: Not to exceed 6.

Closed Seasons: The season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, and masked duck.

Special Falconry Regulations

Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29. These States may select an extended season for taking migratory game birds in accordance with the following:

Extended Seasons: For all hunting methods combined, the combined length of the extended season, regular season, and any special or experimental seasons must not exceed 107 days for any species or group of species in a geographical area. Each extended season may be divided into a maximum of 3 segments.

Framework Dates: Seasons must fall between September 1 and March 10.

Daily Bag and Possession Limits: Falconry daily bag and possession limits for all permitted migratory game birds must not exceed 3 and 6 birds, respectively, singly or in the aggregate, during extended falconry seasons, any special or experimental seasons, and regular hunting seasons in all States, including those that do not select an extended falconry season.

Regular Seasons: General hunting regulations, including seasons and hunting hours, apply to falconry in each State listed in 50 CFR 21.29. Regular-season bag and possession limits do not apply to falconry. The falconry bag limit is not in addition to gun limits.

Area, Unit, and Zone Descriptions

Mourning and White-winged Doves

Alabama

South Zone — Baldwin, Barbour, Coffee, Covington, Dale, Escambia, Geneva, Henry, Houston, and Mobile Counties.

North Zone — Remainder of the State.

California

White-winged Dove Open Areas — Imperial, Riverside, and San Bernardino Counties.

Florida

Northwest Zone — The Counties of Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Okaloosa, Santa Rosa, Walton, Washington, Leon (except that portion north of U.S. 27 and east of State Road 155), Jefferson (south of U.S. 27, west of State Road 59 and north of U.S. 98), and Wakulla (except that portion south of U.S. 98 and east of the St. Marks River).

South Zone — Remainder of State.

Louisiana

North Zone — That portion of the State north of a line extending east from the Texas border along State Highway 12 to U.S. Highway 190, east along U.S. 190 to Interstate Highway 12, east along Interstate 12 to Interstate Highway 10, then east along Interstate Highway 10 to the Mississippi border.

South Zone — The remainder of the State.

Mississippi

North Zone — That portion of the State north and west of a line extending west from the Alabama State line along U.S. Highway 84 to its junction with State Highway 35, then south along State Highway 35 to the Louisiana State line.

South Zone — The remainder of Mississippi.

Nevada

White-winged Dove Open Areas — Clark and Nye Counties.

Oklahoma

North Zone – That portion of the State north of a line extending east from the Texas border along U.S. Highway 62 to Interstate 44, east along Oklahoma State Highway 7 to U.S. Highway 81, then south along U.S. Highway 81 to the Texas border at the Red River.

Southwest Zone – The remainder of Oklahoma.

Texas

North Zone — That portion of the State north of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to TX 20; west along TX 20 to TX 148; north along TX 148 to I-10 at Fort Hancock; east along I-10 to I-20; northeast along I-20 to I-30 at Fort Worth; northeast along I-30 to the Texas–Arkansas State line.

South Zone — That portion of the State south and west of a line beginning at the International Bridge south of Del Rio, proceeding east on U.S. 90 to State Loop 1604 west of San Antonio; then south, east, and north along Loop 1604 to Interstate Highway 10 east of San Antonio; then east on I-10 to Orange, Texas.

Special White-winged Dove Area in the South Zone — That portion of the State south and west of a line beginning at the International Bridge south of Del Rio, proceeding east on U.S. 90 to State Loop 1604 west of San Antonio, southeast on State Loop 1604 to Interstate Highway 35, southwest on Interstate Highway 35 to TX 44; east along TX 44 to TX 16 at Freer; south along TX 16 to FM 649 in Randado; south on FM 649 to FM 2686; east on FM 2686 to FM 1017; southeast on FM 1017 to TX 186 at Linn; east along TX 186 to the Mansfield Channel at Port Mansfield; east along the Mansfield Channel to the Gulf of Mexico.

Area with additional restrictions — Cameron, Hidalgo, Starr, and Willacy Counties.

Central Zone — That portion of the State lying between the North and South Zones.

Band-tailed Pigeons

California

North Zone — Alpine, Butte, Del Norte, Glenn, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama, and Trinity Counties.

South Zone — The remainder of the State.

New Mexico

North Zone — North of a line following U.S. 60 from the Arizona State line east to I-25 at Socorro and then south along I-25 from Socorro to the Texas State line.

South Zone — Remainder of the State.

Washington

Western Washington — The State of Washington excluding those portions lying east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Woodcock

New Jersey

North Zone — That portion of the State north of NJ 70.

South Zone — The remainder of the State.

Special September Canada Goose Seasons

Atlantic Flyway

Connecticut

North Zone — That portion of the State north of I-95.

South Zone — Remainder of the State.

Maryland

Eastern Unit — Calvert, Caroline, Cecil, Dorchester, Harford, Kent, Queen Anne's, St. Mary's, Somerset, Talbot, Wicomico, and Worcester Counties; and that part of Anne Arundel County east of Interstate 895, Interstate 97 and Route 3; that part of Prince George's County east of Route 3 and Route 301; and that part of Charles County east of Route 301 to the Virginia State line.

Western Unit — Allegany, Baltimore, Carroll, Frederick, Garrett, Howard, Montgomery, and Washington Counties and that part of Anne Arundel County west of Interstate 895, Interstate 97 and Route 3; that part of Prince George's County west of Route 3 and Route 301; and that part of Charles County west of Route 301 to the Virginia State line.

Massachusetts

Western Zone — That portion of the State west of a line extending south from the Vermont border on I-91 to MA 9, west on MA 9 to MA 10, south on MA 10 to U.S. 202, south on U.S. 202 to the Connecticut border.

Central Zone — That portion of the State east of the Berkshire Zone and west of a line extending south from the New Hampshire border on I-95 to U.S. 1, south on U.S. 1 to I-93, south on I-93 to MA 3, south on MA 3 to U.S. 6, west on U.S. 6 to MA 28, west on MA 28 to I-195, west to the Rhode Island border; except the waters, and the lands 150 yards inland from the high-water mark, of the Assonet River upstream to the MA 24 bridge, and the Taunton River upstream to the Center St.–Elm St. bridge will be in the Coastal Zone.

Coastal Zone — That portion of Massachusetts east and south of the Central Zone.

New York

Lake Champlain Zone — The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast

along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont border.

Long Island Zone — That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I-95, and their tidal waters.

Western Zone — That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I-81, and south along I-81 to the Pennsylvania border.

Northeastern Zone — That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I-81, south along I-81 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I-87, north along I-87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont border, exclusive of the Lake Champlain Zone.

Southeastern Zone — The remaining portion of New York.

North Carolina

Northeast Hunt Unit — Camden, Chowan, Currituck, Dare, Hyde, Pasquotank, Perquimans, Tyrrell, and Washington Counties; that portion of Bertie County north and east of a line formed by NC 45 at the Washington County line to US 17 in Midway, US 17 in Midway to US 13 in Windsor to the Hertford County line; and that portion of Northampton County that is north of US 158 and east of NC 35.

Pennsylvania

SJBP Zone: The area north of I-80 and west of I-79, including in the city of Erie west of Bay Front Parkway to and including the Lake Erie Duck Zone (Lake Erie, Presque Isle, and the area within 150 yards of the Lake Erie Shoreline).

Vermont

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area north and west of the line extending from the New York border along U.S. 4 to VT 22A at Fair Haven; VT 22A to U.S. 7 at Vergennes; U.S. 7 to the Canadian border.

Interior Zone: That portion of Vermont west of the Lake Champlain Zone and eastward of a line extending from the Massachusetts border at Interstate 91; north along Interstate 91 to US 2; east along US 2 to VT 102; north along VT 102 to VT 253; north along VT 253 to the Canadian border.

Connecticut River Zone: The remaining portion of Vermont east of the Interior Zone.

Mississippi Flyway

Arkansas

Early Canada Goose Area: Baxter, Benton, Boone, Carroll, Clark, Conway, Crawford, Faulkner, Franklin, Garland, Hempstead, Hot Springs, Howard, Johnson, Lafayette, Little River, Logan, Madison, Marion, Miller, Montgomery, Newton, Perry, Pike, Polk, Pope, Pulaski, Saline, Searcy, Sebastian, Sevier, Scott, Van Buren, Washington, and Yell Counties.

Illinois

Northeast Canada Goose Zone — Cook, Du Page, Grundy, Kane, Kankakee, Kendall, Lake, McHenry, and Will Counties.

North Zone: That portion of the State outside the Northeast Canada Goose Zone and north of a line extending west from the Indiana border along Peotone-Beecher Road to Illinois Route 50, south along Illinois Route 50 to Wilmington-Peotone Road, west along Wilmington-Peotone Road to Illinois Route 53, north along Illinois Route 53 to New River Road, northwest along New River Road to Interstate Highway 55, south along I-55 to Pine Bluff-Lorenzo Road, west along Pine Bluff - Lorenzo Road to Illinois Route 47, north along Illinois Route 47 to I-80, west along I-80 to I-39, south along I-39 to Illinois Route 18, west along Illinois Route 18 to Illinois Route 29, south along Illinois Route 29 to Illinois Route 17, west along Illinois Route 17 to the Mississippi River, and due south across the Mississippi River to the Iowa border.

Central Zone: That portion of the State outside the Northeast Canada Goose Zone and south of the North Zone to a line extending west from the Indiana border along Interstate Highway 70 to Illinois Route 4, south along Illinois Route 4 to Illinois Route 161, west along Illinois Route 161 to Illinois Route 158, south and west along Illinois Route 158 to Illinois Route 159, south along Illinois Route 159 to Illinois Route 156, west along Illinois Route 156 to A Road, north and west on A Road to Levee Road, north on Levee Road to the south shore of New Fountain Creek, west along the south shore of New Fountain Creek to the Mississippi River, and due west across the Mississippi River to the Missouri border.

South Zone: The remainder of Illinois.

Iowa

North Zone: That portion of the State north of U.S. Highway 20.

South Zone: The remainder of Iowa.

Cedar Rapids/Iowa City Goose Zone: Includes portions of Linn and Johnson Counties bounded as follows: Beginning at the intersection of the west border of Linn County and Linn County Road E2W; then south and east along County Road E2W to Highway 920; then north along Highway 920 to County Road E16; then east along County Road E16 to County Road W58; then south along County Road W58 to County Road E34; then east along County Road E34 to Highway 13; then south along Highway 13 to Highway 30; then east along Highway 30 to Highway 1; then south along Highway 1 to Morse Road in Johnson County; then east along Morse Road to Wapsi Avenue; then south along Wapsi Avenue to Lower West Branch Road; then west along Lower West Branch Road to Taft Avenue; then south along Taft Avenue to County Road F62; then west along County Road F62 to Kansas Avenue; then north along Kansas Avenue to Black Diamond Road; then west on Black Diamond Road to Jasper Avenue; then north along Jasper Avenue to Rohert Road; then west along Rohert Road to Ivy Avenue; then north along Ivy Avenue to 340th Street; then west along 340th Street to Half Moon Avenue; then north along Half Moon Avenue to Highway 6; then west along Highway 6 to Echo Avenue; then north along Echo Avenue to 250th Street; then east on 250th Street to Green Castle Avenue; then north along Green Castle Avenue to County Road F12; then west along County Road F12 to County Road W30; then north along County Road W30 to Highway 151; then north along the Linn–Benton County line to the point of beginning.

Des Moines Goose Zone: Includes those portions of Polk, Warren, Madison and Dallas Counties bounded as follows: Beginning at the intersection of Northwest 158th Avenue and County Road R38 in Polk County; then south along R38 to Northwest 142nd Avenue; then east along Northwest 142nd Avenue to Northeast 126th Avenue; then east along Northeast 126th Avenue to Northeast 46th Street; then south along Northeast 46th Street to Highway 931; then east along Highway 931 to Northeast 80th Street; then south along Northeast 80th Street to Southeast 6th Avenue; then west along Southeast 6th Avenue to Highway 65; then south and west along Highway 65 to Highway 69 in Warren County; then south along Highway 69 to County Road G24; then west along County Road G24 to Highway 28; then southwest along Highway 28 to 43rd Avenue; then north along 43rd Avenue to Ford Street; then west along Ford Street to Filmore Street; then west along Filmore Street to 10th Avenue; then south along 10th Avenue to 155th Street in Madison County; then

west along 155th Street to Cumming Road; then north along Cumming Road to Badger Creek Avenue; then north along Badger Creek Avenue to County Road F90 in Dallas County; then east along County Road F90 to County Road R22; then north along County Road R22 to Highway 44; then east along Highway 44 to County Road R30; then north along County Road R30 to County Road F31; then east along County Road F31 to Highway 17; then north along Highway 17 to Highway 415 in Polk County; then east along Highway 415 to Northwest 158th Avenue; then east along Northwest 158th Avenue to the point of beginning.

Cedar Falls/Waterloo Goose Zone: Includes those portions of Black Hawk County bounded as follows: Beginning at the intersection of County Roads C66 and V49 in Black Hawk County, then south along County Road V49 to County Road D38, then west along County Road D38 to State Highway 21, then south along State Highway 21 to County Road D35, then west along County Road D35 to Grundy Road, then north along Grundy Road to County Road D19, then west along County Road D19 to Butler Road, then north along Butler Road to County Road C57, then north and east along County Road C57 to U.S. Highway 63, then south along U.S. Highway 63 to County Road C66, then east along County Road C66 to the point of beginning.

Minnesota

Twin Cities Metropolitan Canada Goose Zone —

A. All of Hennepin and Ramsey Counties.

B. In Anoka County, all of Columbus Township lying south of County State Aid Highway (CSAH) 18, Anoka County; all of the cities of Ramsey, Andover, Anoka, Coon Rapids, Spring Lake Park, Fridley, Hilltop, Columbia Heights, Blaine, Lexington, Circle Pines, Lino Lakes, and Centerville; and all of the city of Ham Lake except that portion lying north of CSAH 18 and east of U.S. Highway 65.

C. That part of Carver County lying north and east of the following described line: Beginning at the northeast corner of San Francisco Township; then west along the north boundary of San Francisco Township to the east boundary of Dahlgren Township; then north along the east boundary of Dahlgren Township to U.S. Highway 212; then west along U.S. Highway 212 to State Trunk Highway (STH) 284; then north on STH 284 to County State Aid Highway (CSAH) 10; then north and west on CSAH 10 to CSAH 30; then north and west on CSAH 30 to STH 25; then east and north on STH 25 to CSAH 10; then north on CSAH 10 to the Carver County line.

D. In Scott County, all of the cities of Shakopee, Savage, Prior Lake, and Jordan, and all of the Townships of Jackson, Louisville, St. Lawrence, Sand Creek, Spring Lake, and Credit River.

E. In Dakota County, all of the cities of Burnsville, Eagan, Mendota Heights, Mendota, Sunfish Lake, Inver Grove Heights, Apple Valley, Lakeville, Rosemount, Farmington, Hastings, Lilydale, West St. Paul, and South St. Paul, and all of the Township of Nininger.

F. That portion of Washington County lying south of the following described line: Beginning at County State Aid Highway (CSAH) 2 on the west boundary of the county; then east on CSAH 2 to U.S. Highway 61; then south on U.S. Highway 61 to State Trunk Highway (STH) 97; then east on STH 97 to the intersection of STH 97 and STH 95; then due east to the east boundary of the State.

Northwest Goose Zone — That portion of the State encompassed by a line extending east from the North Dakota border along U.S. Highway 2 to State Trunk Highway (STH) 32, north along STH 32 to STH 92, east along STH 92 to County State Aid Highway (CSAH) 2 in Polk County, north along CSAH 2 to CSAH 27 in Pennington County, north along CSAH 27 to STH 1, east along STH 1 to CSAH 28 in Pennington County, north along CSAH 28 to CSAH 54 in Marshall County, north along CSAH 54 to CSAH 9 in Roseau County, north along CSAH 9 to STH 11, west along STH 11 to STH 310, and north along STH 310 to the Manitoba border.

Southeast Goose Zone — That part of the State within the following described boundaries: beginning at the intersection of U.S. Highway 52 and the south boundary of the Twin Cities Metro Canada Goose Zone; then along the U.S. Highway 52 to State Trunk Highway (STH) 57; then along STH 57 to the municipal boundary of Kasson; then along the municipal boundary of Kasson County State Aid Highway (CSAH) 13, Dodge County; then along CSAH 13 to STH 30; then along STH 30 to U.S. Highway 63; then along U.S. Highway 63 to the south boundary of the State; then along the south and east boundaries of the State to the south boundary of the Twin Cities Metro Canada Goose Zone; then along said boundary to the point of beginning.

Five Goose Zone — That portion of the State not included in the Twin Cities Metropolitan Canada Goose Zone, the Northwest Goose Zone, or the Southeast Goose Zone.

West Zone — That portion of the State encompassed by a line beginning at the junction of State Trunk Highway (STH) 60 and the Iowa border, then north and east along STH 60 to U.S. Highway 71, north along U.S. 71 to I-94, then north and west along I-94 to the North Dakota border.

Tennessee

Middle Tennessee Zone — Those portions of Houston, Humphreys, Montgomery, Perry, and Wayne Counties east of State Highway 13; and Bedford, Cannon, Cheatham, Coffee, Davidson, Dickson, Franklin, Giles, Hickman, Lawrence, Lewis, Lincoln, Macon, Marshall, Maury, Moore, Robertson, Rutherford, Smith, Sumner, Trousdale, Williamson, and Wilson Counties.

East Tennessee Zone — Anderson, Bledsoe, Bradley, Blount, Campbell, Carter, Claiborne, Clay, Cocke, Cumberland, DeKalb, Fentress, Grainger, Greene, Grundy, Hamblen, Hamilton, Hancock, Hawkins, Jackson, Jefferson, Johnson, Knox, Loudon, Marion, McMinn, Meigs, Monroe, Morgan, Overton, Pickett, Polk, Putnam, Rhea, Roane, Scott, Sequatchie, Sevier, Sullivan, Unicoi, Union, Van Buren, Warren, Washington, and White Counties.

Wisconsin

Early-Season Subzone A — That portion of the State encompassed by a line beginning at the intersection of U.S. Highway 141 and the Michigan border near Niagara, then south along U.S. 141 to State Highway 22, west and southwest along State 22 to U.S. 45, south along U.S. 45 to State 22, west and south along State 22 to State 110, south along State 110 to U.S. 10, south along U.S. 10 to State 49, south along State 49 to State 23, west along State 23 to State 73, south along State 73 to State 60, west along State 60 to State 23, south along State 23 to State 11, east along State 11 to State 78, then south along State 78 to the Illinois border.

Early-Season Subzone B — The remainder of the State.

Central Flyway

Nebraska

September Canada Goose Unit – That part of Nebraska bounded by a line from the Nebraska–Iowa State line west on U.S. Highway 30 to US Highway 81, then south on US Highway 81 to NE Highway 64, then east on NE Highway 64 to NE Highway 15, then south on NE Highway 15 to NE Highway 41, then east on NE Highway 41 to NE Highway 50, then north on NE Highway 50 to NE

Highway 2, then east on NE Highway 2 to the Nebraska–Iowa State line.

North Dakota

Missouri River Canada Goose Zone: The area within and bounded by a line starting where ND Hwy 6 crosses the South Dakota border; then north on ND Hwy 6 to I-94; then west on I-94 to ND Hwy 49; then north on ND Hwy 49 to ND Hwy 200; then north on Mercer County Rd. 21 to the section line between sections 8 and 9 (T146N-R87W); then north on that section line to the southern shoreline to Lake Sakakawea; then east along the southern shoreline (including Mallard Island) of Lake Sakakawea to US Hwy 83; then south on US Hwy 83 to ND Hwy 200; then east on ND Hwy 200 to ND Hwy 41; then south on ND Hwy 41 to US Hwy 83; then south on US Hwy 83 to I-94; then east on I-94 to US Hwy 83; then south on US Hwy 83 to the South Dakota border; then west along the South Dakota border to ND Hwy 6.

Rest of State: Remainder of North Dakota.

South Dakota

Special Early Canada Goose Unit: Entire state of South Dakota *except* the Counties of Bennett, Bon Home, Brule, Buffalo, Charles Mix, Custer east of SD Highway 79 and south of French Creek, Dewey south of 212, Fall River east of SD Highway 71 and US Highway 385, Gregory, Hughes, Hyde south of US Highway 14, Lyman, Perkins, Potter west of US Highway 83, Stanley, and Sully.

Pacific Flyway

Idaho

East Zone — Bonneville, Caribou, Fremont, and Teton Counties.

Oregon

Northwest Zone — Benton, Clackamas, Clatsop, Columbia, Lane, Lincoln, Linn, Marion, Polk, Multnomah, Tillamook, Washington, and Yamhill Counties.

Southwest Zone — Coos, Curry, Douglas, Jackson, Josephine, and Klamath Counties.

East Zone — Baker, Gilliam, Malheur, Morrow, Sherman, Umatilla, Union, and Wasco Counties.

Washington

Area 1 — Skagit, Island, and Snohomish Counties.

Area 2A (SW Quota Zone) — Clark County, except portions south of the Washougal River; Cowlitz County; and Wahkiakum County.

Area 2B (SW Quota Zone) — Pacific County.

Area 3 — All areas west of the Pacific Crest Trail and west of the Big White Salmon River that are not included in Areas 1, 2A, and 2B.

Area 4 — Adams, Benton, Chelan, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanogan, Spokane, and Walla Walla Counties.

Area 5 — All areas east of the Pacific Crest Trail and east of the Big White Salmon River that are not included in Area 4.

Ducks

Atlantic Flyway

New York

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont border.

Long Island Zone: That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I-95, and their tidal waters.

Western Zone: That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I-81, and south along I-81 to the Pennsylvania border.

Northeastern Zone: That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I-81, south along I-81 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I-87, north along I-87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont border, exclusive of the Lake Champlain Zone.

Southeastern Zone: The remaining portion of New York.

Maryland

Special Teal Season Area: Calvert, Caroline, Dorchester, Kent, Queen Anne's, St. Mary's, Somerset, Talbot, Wicomico, and Worcester Counties and those parts of Cecil. Harford, and Baltimore Counties east of Interstate 95; that part of Anne Arundel County east of Interstate 895, Interstate 97, and Route 3; that part of Prince Georges County east of Route 3 and route 301; and that part of Charles County east of Route 301 to the Virginia State Line.

Mississippi Flyway

Indiana

North Zone: That portion of the State north of a line extending east from the Illinois border along State Road 18 to U.S. Highway 31, north along U.S. 31 to U.S. 24, east along U.S. 24 to Huntington, then southeast along U.S. 224 to the Ohio border.

Ohio River Zone: That portion of the State south of a line extending east from the Illinois border along Interstate Highway 64 to New Albany, east along State Road 62 to State 56, east along State 56 to Vevay, east and north on State 156 along the Ohio River to North Landing, north along State 56 to U.S. Highway 50, then northeast along U.S. 50 to the Ohio border.

South Zone: That portion of the State between the North and Ohio River Zone boundaries.

Iowa

North Zone: That portion of the State north of a line extending east from the Nebraska border along State Highway 175 to State Highway 37, southeast along State Highway 37 to State Highway 183, northeast along State Highway 183 to State Highway 141, east along State Highway 141 to U.S. Highway 30, then east along U.S. Highway 30 to the Illinois border.

South Zone: The remainder of Iowa.

Central Flyway

Colorado

Special Teal Season Area: Lake and Chaffee Counties and that portion of the State east of Interstate Highway 25.

Kansas

High Plains Zone: That portion of the State west of U.S. 283.

Low Plains Early Zone: That area of Kansas east of U.S. 283, and generally west of a line beginning at the Junction of the Nebraska State line and KS 28; south on KS 28 to U.S. 36; east on U.S. 36 to KS 199; south on KS 199 to Republic Co. Road 563; south on Republic Co. Road 563 to KS 148; east on KS 148 to Republic Co. Road 138; south on Republic Co. Road 138 to Cloud Co. Road 765; south on Cloud Co. Road 765 to KS 9; west on KS 9 to U.S. 24; west on U.S. 24 to U.S. 281; north on U.S. 281 to U.S. 36; west on U.S. 36 to U.S. 183; south on U.S. 183 to U.S. 24; west on U.S. 24 to KS 18; southeast on KS 18 to U.S. 183; south on U.S. 183 to KS 4; east on KS 4 to I–135; south on I–135 to KS 61; southwest on KS 61 to KS 96; northwest on KS 96 to U.S. 56; west on U.S. 56 to U.S. 281; south on U.S. 281 to U.S. 54; west on U.S. 54 to

U.S. 183; north on U.S. 183 to U.S. 56; and southwest on U.S. 56 to U.S. 283.

Low Plains Late Zone: The remainder of Kansas.

Nebraska

Special Teal Season Area: That portion of the State south of a line beginning at the Wyoming State line; east along U.S. 26 to Nebraska Highway L62A east to U.S. 385; south to U.S. 26; east to NE 92; east along NE 92 to NE 61; south along NE 61 to U.S. 30; east along U.S. 30 to the Iowa border.

New Mexico (Central Flyway Portion)

North Zone: That portion of the State north of I-40 and U.S. 54.

South Zone: The remainder of New Mexico.

Pacific Flyway

California

Northeastern Zone: In that portion of California lying east and north of a line beginning at the intersection of Interstate 5 with the California–Oregon line; south along Interstate 5 to its junction with Walters Lane south of the town of Yreka; west along Walters Lane to its junction with Easy Street; south along Easy Street to the junction with Old Highway 99; south along Old Highway 99 to the point of intersection with Interstate 5 north of the town of Weed; south along Interstate 5 to its junction with Highway 89; east and south along Highway 89 to Main Street Greenville; north and east to its junction with North Valley Road; south to its junction of Diamond Mountain Road; north and east to its junction with North Arm Road; south and west to the junction of North Valley Road; south to the junction with Arlington Road (A22); west to the junction of Highway 89; south and west to the junction of Highway 70; east on Highway 70 to Highway 395; south and east on Highway 395 to the point of intersection with the California–Nevada State line; north along the California–Nevada State line to the junction of the California–Nevada–Oregon State lines west along the California–Oregon State line to the point of origin.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada border south along U.S. 95 to Vidal Junction; south on a road known as Aqueduct Road'' in San Bernardino County through the town of Rice to the San Bernardino–Riverside County line; south on a road known in Riverside County as the Desert Center to Rice Road'' to the town of Desert Center; east 31 miles on I-10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east 7 miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I-15; east on I-15 to CA 127; north on CA 127 to the Nevada border.

Southern San Joaquin Valley Temporary Zone: All of Kings and Tulare Counties and that portion of Kern County north of the Southern Zone.

Balance-of-the-State Zone: The remainder of California not included in the Northeastern, Southern, and Colorado River Zones, and the Southern San Joaquin Valley Temporary Zone.

Canada Geese

Michigan

MVP—Upper Peninsula Zone: The MVP—Upper Peninsula Zone consists of the entire Upper Peninsula of Michigan.

MVP—Lower Peninsula Zone: The MVP—Lower Peninsula Zone consists of the area within the Lower Peninsula of Michigan that is north and west of the point beginning at the southwest corner of Branch County, north continuing along the western border of Branch and Calhoun Counties to the northwest corner of Calhoun County, then east to the southwest corner of Eaton County, then north to the southern border of Ionia County, then east to the southwest corner of Clinton County, then north along the western border of Clinton County continuing north along the county border of Gratiot and Montcalm Counties to the southern border of Isabella county, then east to the southwest corner of Midland County, then north along the west Midland County border to Highway M-20, then easterly to U.S. Highway 10, then easterly to U.S. Interstate 75 / U.S. Highway 23, then northerly along I-75 / U.S. 23 and easterly on U.S. 23 to the centerline of the Au Gres River, then southerly along the centerline of the Au Gres River to Saginaw Bay, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canadian border.

SJBP Zone is the rest of the State, that area south and east of the boundary described above.

Sandhill Cranes

Central Flyway

Colorado

The Central Flyway portion of the State except the San Luis Valley (Alamosa, Conejos, Costilla, Hinsdale, Mineral, Rio Grande, and Saguache Counties east of the Continental Divide) and North Park (Jackson County).

Kansas

That portion of the State west of a line beginning at the Oklahoma border, north on I-35 to Wichita, north on I-135 to Salina, and north on U.S. 81 to the Nebraska border.

Montana

The Central Flyway portion of the State except for that area south and west of Interstate 90, which is closed to sandhill crane hunting.

New Mexico

Regular-Season Open Area — Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt Counties.

Middle Rio Grande Valley Area — The Central Flyway portion of New Mexico in Socorro and Valencia Counties.

Estancia Valley Area — Those portions of Santa Fe, Torrance and Bernallilo Counties within an area bounded on the west by New Mexico Highway 55 beginning at Mountainair north to NM 337, north to NM 14, north to I-25; on the north by I-25 east to U.S. 285; on the east by U.S. 285 south to U.S. 60; and on the south by U.S. 60 from U.S. 285 west to NM 55 in Mountainair.

Southwest Zone — Sierra, Luna, Dona Ana Counties, and those portions of Grant and Hidalgo Counties south of I-10.

North Dakota

Area 1 — That portion of the State west of U.S. 281.

Area 2 — That portion of the State east of U.S. 281.

Oklahoma

That portion of the State west of I-35.

South Dakota

That portion of the State west of U.S. 281.

Texas

Zone A — That portion of Texas lying west of a line beginning at the international toll bridge at Laredo, then northeast along U.S. Highway 81 to its junction with Interstate Highway 35 in Laredo, then north along Interstate Highway 35 to its junction with Interstate Highway 10 in San Antonio, then northwest along Interstate Highway 10 to its junction with U.S. Highway 83 at Junction, then north along U.S. Highway 83 to its junction with U.S. Highway 62, 16 miles north of Childress, then east along U.S. Highway 62 to the Texas–Oklahoma State line.

Zone B — That portion of Texas lying within boundaries beginning at the junction of U.S. Highway 81 and the Texas–Oklahoma State line, then southeast along U.S. Highway 81 to its junction with U.S. Highway 287 in Montague County, then southeast along U.S. Highway 287 to its junction with Interstate Highway 35W in Fort Worth, then southwest along Interstate Highway 35 to its junction with Interstate Highway 10 in San Antonio, then northwest along Interstate Highway 10 to its junction with U.S. Highway 83 in the town of Junction, then north along U.S. Highway 83 to its junction with U.S. Highway 62, 16 miles north of Childress, then east along U.S. Highway 62 to the Texas–Oklahoma State line, then south along the Texas–Oklahoma State line to the south bank of the Red River, then eastward along the vegetation line on the south bank of the Red River to U.S. Highway 81.

Zone C — The remainder of the State, except for the closed areas.

Closed areas — (A) That portion of the State lying east and north of a line beginning at the junction of U.S. Highway 81 and the Texas–Oklahoma State line, then southeast along U.S. Highway 81 to its junction with U.S. Highway 287 in Montague County, then southeast along U.S. Highway 287 to its junction with Interstate Highway 35W in Fort Worth, then southwest along Interstate Highway 35 to its junction with U.S. Highway 290 East in Austin, then east along U.S. Highway 290 to its junction with Interstate Loop 610 in Harris County, then south and east along Interstate Loop 610 to its junction with Interstate Highway 45 in Houston, then south on Interstate Highway 45 to State Highway 342, then to the shore of the Gulf of Mexico, and then north and east along the shore of the Gulf of Mexico to the Texas–Louisiana State line.

(B) That portion of the State lying within the boundaries of a line beginning at the Kleberg–Nueces County line and the shore of the Gulf of Mexico, then west along the County line to Park Road 22 in Nueces County, then north and west along Park Road 22 to its junction with State Highway 358 in Corpus Christi, then west and north along State Highway 358 to its junction with State Highway 286, then north along State Highway 286 to its junction with Interstate Highway 37, then east along Interstate Highway 37 to its junction with U.S. Highway 181, then north and west along U.S. Highway 181 to its junction with U.S. Highway 77 in Sinton, then north and east along U.S. Highway 77 to its junction with U.S. Highway 87 in Victoria, then south and east along U.S. Highway 87 to its junction with State Highway 35 at Port Lavaca, then north and east along State Highway 35 to the south end of the Lavaca Bay Causeway, then south and east along the shore of Lavaca Bay to its junction with the Port Lavaca Ship Channel, then south and east along the Lavaca Bay Ship Channel to the Gulf of Mexico, and then south and west along the shore of the Gulf of Mexico to the Kleberg–Nueces County line.

Wyoming

Regular-Season Open Area — Campbell, Converse, Crook, Goshen, Laramie, Niobrara, Platte, and Weston Counties, and those portions of Johnson County east of Interstates 25 and 90 and Sheridan County east of Interstate 90.

Riverton-Boysen Unit — Portions of Fremont County.

Park and Big Horn County Unit — Portions of Park and Big Horn Counties.

Pacific Flyway

Arizona

Special-Season Area — Game Management Units 30A, 30B, 31, and 32.

Montana

Special-Season Area — See State regulations.

Utah

Special-Season Area — Rich, Cache, and Unitah Counties and that portion of Box Elder County beginning on the Utah–Idaho State line at the Box Elder–Cache County line; west on the State line to the Pocatello Valley County Road; south on the Pocatello Valley County Road to I-15; southeast on I-15 to SR-83; south on SR-83 to Lamp Junction; west and south on the Promontory Point County Road to the tip of Promontory Point; south from Promontory Point to the Box Elder–Weber County line; east on the Box Elder–Weber County line to the Box Elder–Cache County line; north on the Box Elder–Cache County line to the Utah–Idaho State line.

Wyoming

Bear River Area — That portion of Lincoln County described in State regulations.

Salt River Area — That portion of Lincoln County described in State regulations.

Farson-Eden Area — Those portions of Sweetwater and Sublette Counties described in State regulations.

Uinta County Area — That portion of Uinta County described in State regulations.

All Migratory Game Birds in Alaska

North Zone — State Game Management Units 1113 and 1726.

Gulf Coast Zone — State Game Management Units 57, 9, 1416, and 10 (Unimak Island only).

Southeast Zone — State Game Management Units 14.

Pribilof and Aleutian Islands Zone — State Game Management Unit 10 (except Unimak Island).

Kodiak Zone — State Game Management Unit 8.

All Migratory Game Birds in the Virgin Islands

Ruth Cay Closure Area — The island of Ruth Cay, just south of St. Croix.

All Migratory Game Birds in Puerto Rico

Municipality of Culebra Closure Area — All of the municipality of Culebra.

Desecheo Island Closure Area — All of Desecheo Island.

Mona Island Closure Area — All of Mona Island.

El Verde Closure Area — Those areas of the municipalities of Rio Grande and Loiza delineated as follows: (1) All lands between Routes 956 on the west and 186 on the east, from Route 3 on the north to the juncture of Routes 956 and 186 (Km 13.2) in the south; (2) all lands between Routes 186 and 966 from the juncture of 186 and 966 on the north, to the Caribbean National Forest Boundary on the south; (3) all lands lying west of Route 186 for 1 kilometer from the juncture of Routes 186 and 956 south to Km 6 on Route 186; (4) all lands within Km 14 and Km 6 on the west and the Caribbean National Forest Boundary on the east; and (5) all lands within the Caribbean National Forest Boundary whether private or public.

Cidra Municipality and adjacent areas — All of Cidra Municipality and portions of Aguas Buenas, Caguas, Cayey, and Comerio Municipalities as encompassed within the following boundary: beginning on Highway 172 as it leaves the municipality of Cidra on

the west edge, north to Highway 156, east on Highway 156 to Highway 1, south on Highway 1 to Highway 765, south on Highway 765 to Highway 763, south on Highway 763 to the Rio Guavate, west along Rio Guavate to Highway 1, southwest on Highway 1 to Highway 14, west on Highway 14 to Highway 729, north on Highway 729 to Cidra Municipality boundary to the point of the beginning.

[FR Doc. E9–20400 Filed 8–24–09; 8:45 am]
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H.R. 774/P.L. 111–50

To designate the facility of the United States Postal Service located at 46-02 21st Street in Long Island City, New York, as the ''Geraldine Ferraro Post Office Building''. (Aug. 19, 2009; 123 Stat. 1979)

H.R. 987/P.L. 111–51

To designate the facility of the United States Postal Service located at 601 8th Street in Freedom, Pennsylvania, as the ''John Scott Challis, Jr. Post Office''. (Aug. 19, 2009; 123 Stat. 1980)

H.R. 1271/P.L. 111–52

To designate the facility of the United States Postal Service located at 2351 West Atlantic Boulevard in Pompano Beach, Florida, as the ''Elijah Pat Larkins Post Office Building''. (Aug. 19, 2009; 123 Stat. 1981)

H.R. 1275/P.L. 111–53

Utah Recreational Land Exchange Act of 2009 (Aug. 19, 2009; 123 Stat. 1982)

H.R. 1397/P.L. 111–54

To designate the facility of the United States Postal Service located at 41 Purdy Avenue in Rye, New York, as the ''Caroline O'Day Post Office Building''. (Aug. 19, 2009; 123 Stat. 1989)

H.R. 2090/P.L. 111–55

To designate the facility of the United States Postal Service located at 431 State Street in Ogdensburg, New York, as the ''Frederic Remington Post Office Building''. (Aug. 19, 2009; 123 Stat. 1990)

H.R. 2162/P.L. 111–56

To designate the facility of the United States Postal Service located at 123 11th Avenue South in Nampa, Idaho, as the ''Herbert A Littleton Postal Station''. (Aug. 19, 2009; 123 Stat. 1991)

H.R. 2325/P.L. 111–57

To designate the facility of the United States Postal Service located at 1300 Matamoros Street in Laredo, Texas, as the ''Laredo Veterans Post Office''. (Aug. 19, 2009; 123 Stat. 1992)

H.R. 2422/P.L. 111–58

To designate the facility of the United States Postal Service located at 2300 Scenic Drive in Georgetown, Texas, as the ''Kile G. West Post Office Building''. (Aug. 19, 2009; 123 Stat. 1993)

H.R. 2470/P.L. 111–59

To designate the facility of the United States Postal Service located at 19190 Cochran Boulevard FRNT in Port Charlotte, Florida, as the ''Lieutenant Commander Roy H. Boehm Post Office Building''. (Aug. 19, 2009; 123 Stat. 1994)

H.R. 2938/P.L. 111–60

To extend the deadline for commencement of construction of a hydroelectric project. (Aug. 19, 2009; 123 Stat. 1995)

H.J. Res. 44/P.L. 111–61

Recognizing the service, sacrifice, honor, and professionalism of the Noncommissioned Officers of the United States Army. (Aug. 19, 2009; 123 Stat. 1996)

S.J. Res. 19/P.L. 111–62

Granting the consent and approval of Congress to amendments made by the State of Maryland, the Commonwealth of Virginia, and the District of Columbia to the Washington Metropolitan Area Transit Regulation Compact. (Aug. 19, 2009; 123 Stat. 1998)

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